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Current Topics: The Coronation Oath—The House of Lords and Privy Council — Judicial Salaries — The Oxford Accent—Local Government (Financial Provisions) Bill: Block Grants Revision — Apportionment and Distribution — London Local Government: Consolidation—Rules and Orders: Housing — Recent Decisions 165
The Rules of the Supreme Court .. 168
Straying Cattle on Railways 169
Company Law and Practice 169
A Conveyancer's Diary 171
Landlord and Tenant Notebook .. 172
Our County Court Letter 172
Reviews 173
Books Received 173
To-day and Yesterday 174
Obituary 175
Correspondence 175
Notes of Cases—
Robert Addie & Sons Collieries Ltd. *v.* McAllister 176
Kronstein *v.* Korda 176
Fryer *v.* Salford Corporation .. 177
Blaustein *v.* Maltz, Mitchell & Co. .. 177
Warmingtons *v.* McMurray 178
Bowen *v.* Commissioner of Inland Revenue 178
Lewis *v.* Plunket 179
In re Lewis's Will Trusts; Phillips *v.* Bowkett 179
Kelly *v.* Wyld 179
In re Hall's Settlement Trusts; Samuell *v.* Lamont 179
Beer *v.* R. M. Fairclough & Sons Ltd. 180
R. *v.* Riordan 180
Parliamentary News 181
Societies 182
Rules and Orders 183
Legal Notes and News 183
Court Papers 184
Stock Exchange Prices of certain Trustee Securities 184

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Current Topics.

The Coronation Oath.

WHILE some may be apt to regard the forthcoming coronation of His Majesty KING GEORGE THE SIXTH mainly as a picturesque ceremony, although, no doubt, with a solemn significance behind it, it is worth remembering that it is one of the most ancient rites connected with kingship in England or its equivalent in those countries where the head of the State has been annually elected, as in the Landesgemeinde of Appenzell as graphically described by Freeman in his "Growth of the English Constitution." The precise form of oath to be taken by His Majesty, which has been carefully framed to meet the altered status of the Dominions consequent on the passing of the Statute of Westminster, 1931, has been gradually evolved from the simpler language of the oath taken by the early English monarchs, and it is significant that even in medieval days, when the vast expansion of the sway of the English king was as yet undreamt of, one of the specific promises made to his people was "to maintain just laws and protect and strengthen such laws," as the people should choose. HENRY I swore to maintain peace, to forbid injustice, and to execute equity and mercy, but in subsequent reigns the language was thus altered: "to observe peace, honour and reverence to God, the church and the clergy, to administer right justice to the people, to abolish the evil laws and customs and to keep the good." Though not precisely in the same words, the language of the oath to be taken by his present Majesty, in substance, preserves the time-honoured promises to his subjects, including that of causing law and justice to be executed in all his judgments, that being followed by the solemn undertaking to preserve in the United Kingdom the Protestant reformed religion and the settlement of the Church of England, its doctrines, discipline, and government as by law established.

The House of Lords and Privy Council.

NOTWITHSTANDING the partial embargo imposed by recent legislation on appeals both to the House of Lords and the Judicial Committee of the Privy Council, the volume of work coming before each of these august tribunals appears to be almost as great as ever. Indeed, so heavy of late has been the list of appeals coming to the Privy Council that the Committee has had to sit in three divisions—two in Downing Street, and the third in one of the committee rooms of the House of Lords. One of the consequences of this praiseworthy determination to have the Dominion and Colonial appeals promptly heard and disposed of has involved a temporary cessation of the sittings of the House of Lords, for even Law Lords have not yet been able to solve the problem of being in two places at once. The House of Lords list of appeals from our Court of Appeal is fairly long, and there are also one or two from Scotland. It is understood, however, that a large proportion of the overseas appeals having now been heard, two Divisions of the Judicial Committee will be able to cope with those cases still undisposed of, and this will, of course, release several of the Law Lords for the work of the home appeals, not a few of which raise questions of novelty and importance.

Judicial Salaries.

SOME ten days ago the House of Commons passed a money resolution to increase the salaries of county court judges in England and Wales, and Metropolitan police magistrates, to £2,000 a year. The salaries of the former were fixed in 1865 at £1,500, the figure at which they stood when the resolution was debated. The remnant of the war bonus, which at one time amounted to £750 a year, had dwindled to £150, to that the net result of the resolution is to increase the salaries of county court judges by £350 a year. Readers will hardly regard this as more than an adequate compensation for the enormously increased volume of work, both in bulk and variety, which had fallen to these courts since 1865. The Solicitor-General adverted to the importance of the work done in these courts—work which made it necessary that they should be able to draw on people in the prime of life and of proved ability in their profession—and he urged that it was of the highest importance that those who appointed these judges should not have the scope of their choice limited by the salary offered which, though it might have been adequate in 1865, was quite inappropriate at the present time. The effective increase in the salaries of the Metropolitan

police magistrates is the same as in the case of the county court judges. The Solicitor-General observed that the field to draw from for these important appointments was broadly the same, and it was important to have sound lawyers of judicial temperament in the prime of life. The total expenditure involved in these changes is estimated at £35,000 a year.

The Oxford Accent.

In the course of a speech in opposition to the resolution for raising the salaries of county court judges and Metropolitan police magistrates, Mr. Campbell Stephen—who, incidentally, is a member of the Bar himself—gave utterance to the somewhat startling, if irrelevant, proposition that it is almost impossible for anyone to become a High Court judge unless he has an Oxford accent, and to dispel the notion that he spoke in jest, cited the case of a nameless eminent silk who, he asserted, had been passed over because he had not been fortunate enough to waste years at Oxford. We are unaware whether the wastage of years is a condition precedent to the acquisition of this elusive affectation or whether mere residence is sufficient to infect the *alumnus* with the contagion, nor do we know whether the banks of the Isis are more inimical to correct speech than, say, those of the Cam. If the manner of speech to which Mr. Stephen takes exception is assumed to be co-terminous with the locality it is but just to him to recall the lamentable fact that no less than twenty-one of the forty-three present occupants of judicial office in the House of Lords and the Supreme Court of Judicature have resided at the aforesaid place, which must now be regarded as the cradle of an accent rather than a seat of learning. At the same time it should be remembered that a sister university whose sons' aquatic prowess (at least in recent years) may have militated against the adoption of affected modes of speech furnishes eleven more, while a similar number have experienced the formative influence of other universities—possibly less obnoxious to Mr. Stephen—or of none at all. We plead for a wider tolerance than Mr. Stephen would apparently allow. A "common form" manner of speech is, we think, to be deprecated as calculated to conceal interesting diversities of origin, and if this observation is taken to embrace the legislature as well as the judiciary, we invite with some confidence the support of Mr. Stephen himself.

Local Government (Financial Provisions) Bill: Block Grants Revision.

Factors which have necessitated the revision of the system of the distribution among the local authorities of the block grants instituted by the Local Government Act, 1929, as also changes relating to the total sum to be distributed, are set out in the statutory report on the result of the investigation into the system which was issued as a White Paper on 17th February (H.M. Stationery Office, price 6d.). The new proposals require legislative sanction and are incorporated in the Local Government (Financial Provisions) Bill, which was read a second time in the House of Commons on Wednesday, when the money resolution in connection with the Bill was also agreed to by a Committee of the whole House. Considerations of space forbid anything like a complete treatment of the many complex matters involved, but the main considerations involved may be shortly outlined. New factors concerning the total Exchequer contribution are (*a*) the proposed merging in the block grant of the contributions payable by local authorities under s. 45 of the Unemployment Act, 1934, (*b*) the proposed deduction from the block grant in consequence of the transfer of trunk roads from county councils to the Ministry of Transport, and (*c*) the proposed addition to the block grant by way of compensation for the cessation of the male servants licence duties. Under the provisions of the Local Government Act, 1929, the minimum amount of the Exchequer contribution for the third fixed grant period beginning 1st April, 1937, would have amounted to about £48,349,000, the minimum addition of new Exchequer money calculated on the proportion of the general contribution to rate and grant-borne expenditure in the penultimate year of the previous fixed grant period amounting to about £4,427,000. Adjustments dictated by the factors above mentioned involve a deduction from this figure of £2,205,000. It is proposed, however, to increase the minimum amount of the new Exchequer money from £2,222,000, arrived at by the aforesaid deduction to a round sum of £2,250,000, with the result that the total Exchequer contribution for the third fixed grant will, if the Bill is passed, amount to £46,172,000.

Apportionment and Distribution.

Two problems are involved in the determination of how much of the total grant each local authority is to receive—the apportionment between each county borough and the county, and the distribution of the part of the sum received by each county among the county districts within its area. Members of the conference of financial advisers have not been able to put forward any unanimous recommendation for the alteration of the existing methods of distribution among the country districts, which is mainly on a capitation basis, and it is not proposed to effect any alteration under this head. The Minister of Health suggests, moreover, that the alterations of boundaries of areas and in classification, which, though not yet complete, has proceeded continuously since 1930 under s. 46 of the Local Government Act, 1929, has removed much of the cause for complaint which might otherwise have existed. Changes are, however, proposed in regard to the original apportionment between the various counties and county boroughs. It should, perhaps, be explained that under the Local Government Act, 1929, the apportionment depends partly on the estimated loss of rates and discontinued grants resulting from the provisions of the Act, and partly on a formula of weighted population devised with reference to the prevalence of certain factors in the locality concerned. There are the number of children under five, the rateable value per head of population, unemployment among insured persons and, in counties, the population for each mile of public road. For the first two fixed grant periods, each authority was entitled to 75 per cent. of estimated loss of rates, etc., and the Act provided for a reduction of this percentage to fifty in the third period, twenty-five in the fourth, while in the fifth and succeeding periods the apportionment is to be wholly on formula, which also dictated the distribution of the balance in the earlier periods. Changes proposed relate to unemployment and sparsity factors. (The latter is the population for each mile of public road.) Under the provisions of the Act of 1929, the weighting for unemployment is calculated by reference to the percentage in excess of one and a half which the number of unemployed insured persons bears to the population of the area. In the third and successive grant periods, it is provided that the original multiple of ten shall be reduced in proportion as the distribution of the exchequer contribution is based increasingly on formula instead of losses on rates, etc. To counteract this provision it is proposed that the multiple shall be retained at ten and that a super-weighting shall be introduced where the calculated percentage of unemployed is in excess of five. It is proposed that this increase be accompanied by some increase in the weighting for sparsity in order, *inter alia*, to safeguard the position of counties generally and to improve the position of the poorest counties.

London Local Government: Consolidation.

The Local Government Act, 1933, which effected so useful a measure of consolidation in regard to local authorities through the country, does not, except where expressly provided, extend to London (s. 308 (2)). The principal exceptions are the provisions of Pt. III, relating to joint committees (s. 97) and Pts. X and XI, which relate respectively to accounts and audit and to local financial

returns (see ss. 243 and 248). The General Purposes Committee of the London County Council reports, however, that the need for consolidating local government law is even greater in London that it was in the provinces—a proposition with which practitioners will not be disposed to quarrel—because, in addition to the multitudinous Acts which applied in the provinces, London has a superimposed code in the Metropolitan Management Act, 1855, and the London Government Act, 1899, and an extended series of London County Council (General Powers) Acts. When the London County Council's Bill for the Act of 1934 was in Parliament, the Lord Chairman of Committees, it is stated, expressed the view that the reform now suggested should be pressed forward. Two reports which were prepared showed that, apart from special Acts, the London law, corresponding with the matter covered by the Local Government Act, 1933, was contained in some sixty-five statutes extending over a period of 400 years. The Corporation of the City asked that it should be specifically excluded from the proposed Bill, but it is urged that, as regards certain minor matters, difficulty would arise if the appropriate provisions did not apply to the City, and it is proposed to ask the corporation to agree to such application. The Metropolitan Boroughs Standing Joint Committee, after consultation with the borough councils, has expressed itself strongly in favour of consolidation and submitted detailed proposals. It is now suggested that the Bill should take the form of a combination of all the applicable provisions of the Local Government Act, 1933, and the provisions of various London County Council Acts and other special Acts, with certain amendments, additions and repeals, while it is not proposed to include provisions which are to be found neither in existing London law nor in the Act of 1933 for the provinces, as it is necessary that the Bill should be mainly a consolidating measure, with such amendments as are required or desirable for securing uniformity, simplicity or conciseness.

Rules and Orders: Housing.

ATTENTION should be drawn briefly to the contents of recent rules and orders made by the Minister of Health under s. 176 (1) of the Housing Act, 1936, referred to on p. 183 of the present issue. The Housing Act (Form of Orders and Notices) Regulations, 1937, revoke the Housing Acts (Form of Orders and Notices) Regulations, 1936, and provide in a schedule a series of fifty-one forms to be used in connection with the powers and duties of the local authority under the Housing Act, 1936, relating to demolition orders, closing orders, clearance orders, compulsory purchase orders, etc. The Housing Act (Extinguishment of Public Right of Way) Regulations, 1937, revoke the Housing Acts (Extinguishment of Public Right of Way) Regulations, 1936, and prescribe forms of order and notices for use in connection with an order by a local authority for the extinguishment of a public right of way under s. 46 of the Housing Act, 1936. The Housing Act (Overcrowding and Miscellaneous Forms) Regulations, 1937, revoke the Housing Acts (Overcrowding and Miscellaneous Forms) Regulations, 1936, contain rules for measuring the floor area of a house for the purpose of determining the number of persons permitted to sleep in a house under Pt. IV of the Housing Act, 1936, and prescribe a form of the summary of ss. 58, 59 and 61 of the Act required to be inserted in rent books, and of notices, certificates, etc., for use in connection with the overcrowding provisions of the Act. All the foregoing regulations come into operation forthwith.

The Marriage Bill: A Correction.

WE desire to express our regret that an error crept into our note on the Marriage Bill in the issue of 13th February. The amendment to the effect that no petition for divorce on the ground of the respondent's desertion should be presented within one year of the passing of the Act was not (as was stated) accepted by the Standing Committee.

Recent Decisions.

IN *Rex* v. *Kurasch* (*The Times*, 24th February), the Court of Criminal Appeal dismissed an appeal by one who, with two others, was convicted of larceny and conspiracy to steal, at Plymouth Quarter Sessions. In the circumstances of the case it was a vital matter for the prosecution to prove possession of Kruger sovereigns by the appellant. The Recorder ruled that evidence by a police officer that on going to the appellant's house such were found in the possession of a servant of his wife was not admissible, and the ground of appeal was that notwithstanding the reiterated warnings of the Recorder the jury had allowed themselves to be improperly influenced by such evidence. The Court of Criminal Appeal held that such evidence was admissible on the principle usually associated with the possession of house-breaking instruments.

In *Rex* v. *Riordan* (p. 180 of this issue), the Court of Criminal Appeal quashed a sentence of three years' detention in a Borstal Institution passed at Maidstone Quarter Sessions on one who had been convicted at a juvenile court for larceny on the ground that Quarter Sessions had failed in the duty of inquiring into the circumstances of the case as required by s. 10 of the Criminal Justice Administration Act, 1914 (see *Rex* v. *Holding*, 25 Cr. App. R. 28). SWIFT, J., strongly criticised the practice at such quarter sessions of not instructing counsel in cases of this kind where the liberty of young persons was concerned.

In *Dean* v. *Fox*, to which reference was made in *The Times* of 18th February, the Court of Appeal dismissed an appeal from an order of the Official Referee awarding the defendant, who had paid into court some £3 more than the claim, the costs of an action. LORD WRIGHT, M.R., drew attention to s. 1 of the Administration of Justice Act, 1932, under which no appeal is allowed from the decision of an Official Referee except on a question of law and, while adverting to the fact that the whole matter was complicated by a decision that an appeal on the ground that there was no evidence to support a finding of fact raised a point of law, said that he felt advisers of clients whose case had been dealt with by the Official Referee and who desired to appeal should remember the precise terms of the Administration of Justice Act and weigh very carefully what could be done.

In *White, otherwise Bennett* v. *White* (*The Times*, 20th February), the court pronounced a decree *nisi* of nullity concerning a form of marriage celebrated in Australia between the petitioner and the respondent on the ground that the latter was married at the time. The respondent, who had never resided in England, married at Malta some eighteen years earlier, and had since rejoined his wife. He had acknowledged service of the petition, but had not entered an appearance or taken any other part in the proceedings. It was held that in the circumstances the court had jurisdiction to pronounce the decree.

In *Heaps* v. *Perrite, Ltd.* (*The Times*, 20th February), the Court of Appeal declined to disturb an award of £10,000 made by SWIFT, J., in an action in which a youth of twenty years of age claimed damages for personal injuries sustained as the result of an accident when working a machine which led to the loss of both his hands.

In *Ex parte Nodder* (*The Times*, 23rd February), the court discharged with costs a rule *nisi* for a writ of attachment which had been granted against the editor and against the publishers of the *Empire News* in respect of the publication of a photograph of one accused of the abduction of a girl. The facts of the case, SWIFT, J., intimated, disclosed no ground whatever for the suggestion that the publication was in the least degree calculated to prejudice the fair trial of the case against the accused, and the learned judge thought that the rule *nisi* would never have been granted if the court had not been led to believe that some question of disputed identity existed at the time when the photograph was published.

The Rules of the Supreme Court.

IX.—DOCUMENTS IN A TRIAL.

> "You would not ask somebody to come from Kew to give evidence that on a certain day ·001 of an inch of rain fell, or something of that sort. Just that sort of thing is constantly occurring and results in a tremendous waste of time and money."

THIS satirical comment by Lord Maugham in his evidence before the Royal Commission (p. 310, 4240) has the support, not only of other distinguished judges such as Lord Wright (pp. 76, 77; 1147), but also of such representative bodies as the Chamber of Commerce, the Bar Council, The Law Society, and of the Royal Commission itself (Cmd. 5065; pp. 78, 79; 228–233).

What happens at present? It is necessary to prove that A is the rateable occupier of a house; an official must appear, bearing a hefty tome and broad of bulk, to which he makes but one quick reference. A plan must be "proved"; then call the surveyor. Do you wish to prove the present condition of a witness? The strongest medical certificate will avail you nothing if your learned friend objects. And who would think in any circumstances of dispensing with the calling of the doctor? After all, he can be cross-examined—for all the good this will do! The report of a surveyor, a list of the market prices of goods, unless they are "proved" in the proper manner, are not "evidence." Thus witnesses are kept from their business or their profession for an unnecessary length of time; trials are prolonged; costs are increased; and litigation increases in disfavour.

Lord Maugham, remarking how, in a "running-down" case, the evidence of a policeman is usually required, observes—

> "The policeman has not seen the accident, but he has taken reports of the driver, or of the injured persons, and others. He is called in to give evidence, and he reels off what he has written in his note-book, and he is cross-examined without getting anything from him, except the fact that he took down, at the time, what he has read. I cannot see why you should not have the report of the policeman handed to both sides and looked at by the judge, for what it is worth. . . . What is the good, in ninety-nine cases out of a hundred, of calling the policeman? You seldom get anything out of him, except what he has written down" (p. 312; 4269).

The learned law lord laid before the Commission a draft Bill for the amendment of the law of evidence, a Bill which had been prepared by a committee of judges appointed by the Lord Chancellor. The Bill has been approved in principle by several chambers of commerce and also by the Bar Council. The Royal Commission gave it "general approval"—"a pat on the back" as Lord Maugham desired—and recommended, "as soon as opportunity offers," its introduction into Parliament—as "a first step towards a little more generous acceptance of documents as evidence" (p. 79 of the Report; 233). Avory, J., was one of the members of that committee—Avory, J., of whom Lord Hewart made the memorable declaration: "If in doubt look it up in Mr. Justice Avory" (p. 327; 4464)—and there were other judges of experience, Greer, L.J., Langton, J., and Lord Roche. It was a purely judicial body, with no admixture from the Bar, and its object was to see if the rules of evidence could be simplified. The Bill, having the support of representative bodies, was put before all the law lords; all, except one, were in favour; and since it was hoped that the measure might be unopposed, for the time being the Bill was dropped. But Lord Maugham added caustically:—

> "You never get lawyers to agree to any report. In illustration of that, you have Lord Eldon and Lord Ellenborough, who were against every possible reform, and there are others, in these times, who are equally against every possible reform" (p. 313; 4281).

The Bill might indeed be described as "a first step." It proposed to allow a document made by a person in the ordinary course of his duty to be produced, if he could not be found, provided that the document was made *ante litem motam*—before the dispute arose. Such a document is at present admissible only if the person concerned is dead. Then, it was proposed that documents which come from proper custody—if they were more than twelve years' old—might be produced without the need for calling the attesting witnesses. The court would have the power to estimate the weight of that evidence. One sub-section of the Bill was confined to documents and reports made *ante litem motam*; a different rule would apply where the document came into existence after the dispute arose. Another provision in the Bill would empower a party to get an order for the admission of a document at any stage of the proceedings. Such documents would be admitted just for what they were worth—*quantum valeant*; to a particular document the judge might well attach little or no weight.

In the statement which he submitted to the Commission, Lord Maugham succinctly summarised his views (at p. 309). In France (he pointed out) civil cases in the High Court are almost always decided on purely documentary evidence. In the Courts of Scotland more documents are admissible than is possible according to the English rules of evidence. That the continental example be copied he was very far from suggesting; but he did advocate "a much more generous admission of documentary evidence than our present rules admit."

> "For this purpose," he proceeded, "an Act of Parliament would be necessary, followed by some well-considered rules of court; and of course these rules must distinguish between documentary evidence coming into existence *ante litem motam*, and writings, e.g., reports of experts and others, made for the purpose of the trial, which might require verification by affidavit."

Such a considered judgment must commend the manifest support of most reasonable men; is it necessary to wait a decade or two until the unlikely—or, indeed, unnecessary—event of unanimity among the lawyers?

The Commission, in effect, adopted the suggestions of Lord Maugham. It is sound in principle, they thought, that facts should be proved by a witness in court who can be cross-examined. Yet points there are which could well be decided on affidavit, or on a certificate from a public body, or even on "an unsworn declaration or a statement in a book of reputation" (p. 78, 228). Letters and documents written or executed before the trial may, indeed, be "more convincing than the writer's assertion on oath at the trial." The present rules on the admissibility of written evidence should be reconsidered, particularly because questions of fact are now, for the most part, decided by a judge sitting without a jury (229). They were in favour of "a very substantial relaxation" of these rules.

> "We consider," they recommend, "that the judge should have a discretion to admit all documents and records relating to the matters in question which came into existence before the dispute arose" (230).

He would thus be in the position of a commercial arbitrator who admits all such evidence as he chooses, or of the Admiralty Judge under the Admiralty Short Cause Rules, 1908, as amended 1930. According to r. 6 of these rules ("The Annual Practice," 1927, pp. 2652, 3)—which, without the consent of the parties, have no operation:—

> "The judge shall be at liberty to receive, call for, and act upon, such evidence, documentary or otherwise, whether legally admissible or not, as he may think fit."

Similarly (the Commission recommended), the court should have power to admit affidavits or even unsworn declarations, "without limitation." There would be no absolute right to ask for an order to cross-examine the deponent, but in important or serious cases such leave would normally be

granted (231). To trials by jury, however, and to criminal cases this relaxation of the rules of evidence would not apply (232). Moreover, the weight to be attached to a document would be a matter entirely for the opinion of the judge at the trial; the relaxation related to admissibility, not to the question of weight.

Sir Claud Schuster, in the course of the evidence, remarked: "Lord Maugham, you must not take it, if the Bill [i.e., the draft Bill for the amendment of the law of evidence] can be said ever to have been born, that it is dead" (p. 314; 4305). Is it not time, then, with such distinguished aid, to bring it to the birth?

(To be concluded.)

Straying Cattle on Railways.

THE question of liability for damage to cattle, which have strayed on to a railway, is not one which *primâ facie* involves any investigation of title to land. Nevertheless, two recent cases show that liability may depend upon the provisions of the title deeds of the railway. In *Heywood* v. *Great Western Railway Company*, at South Molton County Court, the claim was for £14 as damages for negligence. The plaintiff's case was that in 1872 the land was conveyed by Earl Fortescue to the company, and the conveyance imposed an obligation upon them to maintain the gate and fence in proper order. This condition had been broken during the night of the 27th May, 1936, when a bullock had been killed on the line. The gate at the crossing was found wide open, as it was not working properly and fell open against the field, instead of towards the railway, and did not fasten properly. The defence was a denial of negligence, as the gate admittedly had a hasp and staple fastening, as well as the latch. There was no liability to maintain a gate which closed automatically, as the duty of closing the gate was upon any person using it, but this duty had apparently been neglected by some person unknown. On the 28th May, the permanent way staff had found the gate was working satisfactorily with effective fastenings. His Honour Judge Wethered found in favour of the defendants. Instead of giving them judgment, however, he entered a non-suit on the plaintiff's application.

An example of a successful claim by a farmer occurred in *Symons* v. *Southern Railway Company* (1935), 79 SOL. J. 434. The defendants' predecessors in title were the North Cornwall Railway Company, who had bought the site of their line in 1885. Under the Railway Clauses Consolidation Act, 1845, s. 68, they were under a statutory liability to maintain hedges, unless they had paid a higher price for the land in order to be released from this liability. The purchase price of the land had in fact included an amount, paid in discharge of this liability to the original vendor, and the defendants therefore denied liability for the loss of two of the plaintiff's sheep. The latter had been killed on the railway, in August, 1934, and the plaintiff afterwards recovered judgment for £5 at Launceston County Court. The defendants appealed, on the ground that the plaintiff's father, through whom he claimed, had bought the freehold in 1911. Before that year the plaintiff's father had only been a weekly tenant, and the defendants had therefore maintained the hedges. The purchase of the freehold, however, had caused a merger, so that the plaintiff's father was bound by the original freeholder's release of the company's statutory liability to maintain the hedge. The case for the respondent, the original plaintiff, was that no change of practice had occurred in 1911, and the company had thereafter repaired the hedges, as it always had done in the past. The result was that the company had accepted responsibility for the hedges for nearly fifty years, prior to 1934, when the hedge was severely pruned. Owing to the latter circumstance, the company had been notified that they would be held responsible for any loss of or damage to sheep. The Court of Appeal (Lord Hanworth, M.R., Lord Justice Roche, as he then was, and Mr. Justice Swift) held that there had been no merger, on the above facts, and the company was still liable to repair the hedges. The appeal was therefore dismissed, with costs.

Even if a farmer raises no objection to the neglect of fences, he may still be able to recover damages, as in *Dixon* v. *Great Western Railway Company* [1897] 1 Q.B. 300. The plaintiff occupied a meadow, crossed by a viaduct, which was supported on arches. A colt was under an arch, while a train passed overhead, and became so frightened that it hurt itself against a post and rail fence, and had to be destroyed. The plaintiff claimed damages for negligence, and, on the jury's verdict that the fence was rotten, Lord Russell of Killowen, C.J., gave judgment in the plaintiff's favour. The company appealed, on the ground that the railway was opened in 1857, but no fence had been erected until 1884. As the fence had not been erected within five years of the opening, i.e., the period specified in the Railways Clauses Consolidation Act, 1845, s. 73, the company contended that they were no longer under the statutory liability to make accommodation works. The fact that they had voluntarily erected a fence, which had become decayed, did not entitle the plaintiff to damages. The Court of Appeal rejected these contentions, and Lord Esher, M.R., held that the case was not within s. 73, *supra*, but was governed by s. 68, *supra*. The latter section expressly imposed a duty to fence, without any limitation of time. The fact that no fence had been erected for five years, or any other period, was therefore no defence to the claim for damages. Lords Justices Lopes and Rigby agreed, and the appeal was accordingly dismissed, with costs.

A farmer is therefore not necessarily without remedy, even if a predecessor in title has apparently bargained away the right to have the fences repaired by a railway company.

Company Law and Practice.

The Secretary.

THE secretary of a company is entrusted with a variety of duties of an executive nature and in most cases he will find that his job is a full time one. It is he who distributes any notices which the directors require to be sent out to the members of the company, and it is he who is in charge of the various books and registers of the company; he will also write up the minutes of meetings and attend to the day-to-day correspondence. He is a servant of the company who must obey any orders which he receives from the directors so long as obedience will not to his knowledge implicate him in any wrongful course of conduct, and he is also the agent of the company on whose representations other persons may rely concerning matters which fall within the scope of his duties. This is very important, since notice received by the secretary may be notice to the company in accordance with the law relating to principal and agent, though if the secretary is at the same time secretary of another company any information acquired by him as secretary of that other company will not necessarily constitute notice to the first company. It will only be notice to the first company if the secretary owes a duty to the other company (i.e., the one through which he obtained the information) to divulge it to the first company: *In re Fenwick, Stobart and Company Ltd.* [1902] 1 Ch. 507. The secretary's position as agent is also important as the company may be bound by his actions or statements, and I will refer later on in this article to one or two decisions of the courts which show how far this is so. But before going on to examine these questions I want first of all to refer to certain of the provisions of the Companies Act, 1929, which apply to the secretary.

As I have said, the secretary is a servant of the company and he is included in the expression "clerk or servant" in

s. 264 (1) (*b*), which entitles him in a winding up to have his salary paid as a preferential payment in respect of services rendered to the company during the four months next before "the relevant date" not exceeding £50. The relevant date is in the case of a compulsory winding up the date of the winding up order, and in any other case the commencement of the winding up. When, however, the secretary does not give his whole time to the service of the company and discharges the general routine work of his office by a clerk deputed and paid by himself he is not entitled to rank as a preferential creditor. In *Cairney* v. *Back* [1906] 2 K.B. 746, the secretary carried out his duties to the extent of attending at the company's office from about twelve till two on most days and further by attending directors' meetings, dealing with the company's correspondence and keeping the minute book. He also engaged and himself paid a clerk who worked in the office from ten till five every day. Walton, J., found that the general work was really done by this clerk and that the secretary's practice was merely to call in at the office to see what was going on. The learned judge held that the priority given by s. 1 of the Preferential Payments in Bankruptcy Act, 1888, was not intended to apply to such circumstances.

The secretary is also an officer of the company for the purposes of ss. 214 and 216 of the Companies Act, and he may, therefore, be subjected to private or public examination in connection with the affairs of a company in liquidation if the circumstances warrant it and the court so orders. He may also be the object of misfeasance proceedings under s. 276. He is, therefore, in a much more exalted and, at the same time more vulnerable, position than his comparatively humble title might lead one to expect, and his is a case where a little knowledge of company law is probably better than no knowledge at all. He should know, for instance, that the word "limited" must, in the case of the vast majority of companies at any rate, be the last word in the company's name, and that this name must be displayed on all letters, cheques, places of business, etc. If these provisions are not complied with the secretary will be personally liable on any obligation purported to be entered into by the company, and he will also be liable to a default fine as an "officer in default" within the meaning of s. 365 of the Act. Again, he is specifically mentioned in s. 42 (3) as one of the persons liable to be fined if the provisions of that section as to returns of allotments and the filing of contracts which constitute the title of an allottee are not observed, and he appears likewise in s. 80 and is there threatened with further penalties if the company fails to register particulars of every charge which it creates and of every issue of debentures of a series which the Act requires to be registered.

When is the company bound by the acts of its secretary? The answer is: when the secretary is acting within the scope of his duty—that is to say, if the secretary makes representations to other persons concerning the affairs of the company, those persons can safely act on those representations if they fall within the scope of the secretary's duty. If they do not, then, of course, such persons may have a cause of action against a secretary who has misinformed and misled them, but they cannot go against the company itself. At one time it was thought that where an agent had committed a wrong in the course of his employment his principal could not be made liable if the agent was not acting for the benefit of the principal and the principal in fact obtained no benefit from the wrongful act. This, however, is not now the law, and the sole factor to be considered is whether or not the agent is acting in the course of his employment, regardless of whether or not his actions were taken for his own or his principal's benefit: see *Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716. That was a case in which a solicitor's clerk defrauded a client of the firm and the firm was held responsible to the client. Lord Macnaghten (at p. 731) puts the proposition in these words: "A principal must be liable for the fraud of his agent committed in the course of his agent's employment and not beyond the scope of his agency, whether the fraud be committed for the principal's benefit or not." This is clearly common sense, since the proposed victim of a nefarious agent cannot be expected to do more than consider whether the person with whom he is dealing is actually exceeding his authority or not. He should not also have the extra burden imposed on him of inquiring who might benefit from the perfidy of the agent, assuming the agent's motives to be bad.

It is a common practice to provide that all cheques drawn by the company shall be signed by one or sometimes two directors and by the secretary. As against the company's bankers the directors are bound to take reasonable precautions to prevent forged cheques from being presented to the bank in the company's name, but in normal circumstances they will have discharged this obligation if they have instructed the bank to honour only those cheques which are signed by one or two directors, as the case may be, and by the secretary. If, in spite of these precautions, the bank pays cheques which appear to have been properly drawn on behalf of the company, but the signatures on which have in fact been forged, the company will be entitled to recover the moneys debited to its account. Thus, in *Kepitigalla Rubber Estate Ltd.* v. *National Bank of India Ltd.* [1909] 2 Ch. 1010, the secretary of the company forged the signatures of two of the directors of the company on a number of cheques, and these cheques were paid by the bank. Bray, J., held that on the facts the company was entitled to recover the sums paid. I do not refer to this case in greater detail, as each case must ultimately depend on its own particular facts as showing how far the directors have taken adequate precautions to prevent the bank from being deceived in this way. In the case cited it is to be noted that the secretary was a man "with the best of characters" who had served the company honestly for some time prior to his lapse from "the best policy." It follows that directors should exercise great care in the selection of a proper person to fill an office which provides its holder with an intimate knowledge of the internal affairs of the company, and the secretary on his side, appointed to a position of trust and responsibility, should exercise equal care in avoiding any course of conduct which might place him in a situation where he has interests incompatible with his duties to the company. He must not for instance accept presents or rewards from persons who are engaged in negotiations or transactions of any sort with the company, for if he does so he will be guilty of a misfeasance and will have to account to the company for any benefits received by him. In *McKay's Case*, 2 Ch.D. 1, the owner of certain property agreed to sell it to a company which was in the course of being formed, the consideration for the sale being partly cash and partly shares in the new company. There was also a second agreement made between the owner of the property and M, who had acted for the company in the first agreement and had been instrumental in bringing about the transaction. By this second agreement it was provided that a number of the shares which were to form part of the consideration for the sale agreement were to be transferred to M in recognition of his services. The company was formed and adopted the sale agreement; M became the secretary of the company, the shares were allotted in accordance with the sale agreement and a number of them were then transferred to M under the second agreement, M, as secretary, signing the transfer to himself. The company later went into liquidation and the liquidator instituted misfeasance proceedings against M. Although at the date of the execution of the agreements M was not and could not be an agent of the company, since it was not in existence, yet by the time of the transfer of the shares to him he was an agent and the company had adopted the sale agreement. In those circumstances the benefit which he, as agent of the purchaser, received from the vendor is treated as a benefit received by him on behalf of the company.

A Conveyancer's Diary.

Substitutional Bequests—A Question of Construction.

THE question of the construction to be put upon words of futurity in cases of gifts to a class, is one which has presented no little difficulty in the past and I have recently had to consider the authorities on the subject.

It is, I think, the general rule that in a gift to a class of persons with a substitutional gift over to the issue of the members or one of the members of the class, the issue can only be entitled if they are able to establish that their parent might have been entitled as one of those forming the class.

There have been many cases on this subject.

The general rule was laid down in an early authority, *Christopherson* v. *Naylor* (1816), 1 Mer. 320.

The facts there were that there was a bequest to each and every the child and children of the testator's brothers and sisters who should be living at the time of his death, with a proviso that if any child or children of the brothers or sisters of the testator should die in his lifetime, then the legacy or legacies thereby intended for such child or children so dying should be for his, her or their issue. It was held that only the issue of such children of the brother and sister as were living at the date of the will were entitled. Sir W. Grant, V.-C., said : " The nephews and nieces are here the primary legatees. Nothing whatever is given to their issue, except in the way of substitution. In order to claim, therefore, under the will, these substituted legatees must point out the original legatees in whose place they demand to stand. But, of the nephews and nieces of the testator, none could have taken besides those who were living at the date of his will. The issue of those who were dead at that time can consequently show no object of substitution."

It is true that in that case the gifts to the nephews and nieces of the testator were not in the strict sense substitutional because these gifts were in fact substantive gifts, that is direct gifts. That is so, no doubt, but gifts of that kind are usually called " substitutional," and in the authorities have generally been treated and termed as such.

The rule so stated is based upon the ordinary rule which applies to the construction of wills, namely, that words used in a will must be given their ordinary and usual meaning unless the court can find, in the will itself or in the circumstances of which the court may take notice, that a different meaning should be given to them. So, where a testator makes a bequest " to all my children," or to some other class of beneficiaries, he must be presumed to mean those members of that class who were then living or should come into existence later, and if the testator provides for what is to happen if any of the members of the class " shall die," he means " shall die in the future " and does not intend to include those who may already have died.

The rule has, however, not always been strictly followed where the class of legatees have been relations of the testator, although the authorities which point in that direction are, perhaps, not to be relied upon altogether.

In *Golding* v. *Thompson* (1868), L.R. 11, Eq. 366, a testator gave his residuary estate to his brothers and sisters and their issue equally as tenants in common. At the date of the will all the brothers of the testator, and one of his sisters, had been dead for some years, and there survived him only two sisters, but three of his brothers and a deceased sister had left issue who survived the testator.

It was held that as the testator must be presumed to have known that all his brothers and one of his sisters were dead, he must have intended the property to go to his brothers and sisters if living, but if they were dead, to their issue, who were substituted for them and to go to the issue *per stirpes*.

It has been established, however, that the fact of the relationship of the testator to the legatees does not abrogate the rule.

In two of the authorities, *Re Smith's Trusts* (1875), 5 Ch. D. 497, n., and *Re Sibley's Trusts* (1877), 5 Ch. D. 494, Jessell, M.R., held that the rule had no application because of the relationship between the testator and the legatees, but those cases have not been followed, and in fact in *Re Chinnery* (1888), 39 Ch. D. 614, Stirling, J., said : " I confess that apart from the authorities I have had a strong inclination to follow the opinion of the late Master of the Rolls, which seems to me more likely to give effect to the testator's intention, but the weight of authority is against his view."

It would appear, therefore, so far that the authorities were all in favour of the rule as laid down in *Christopherson* v. *Naylor*.

The rule, however, has always been considered as subject to any contrary intention to be gathered from the will itself.

That is exemplified by *Loring* v. *Thomas* (1861), 1 Drew and Sm. 497.

In that case there was a gift of aliquot parts of a fund to the children of A, the children of B, the children of C, and the grandchildren of D with a proviso that if any child or children of A, B or C or of any grandchildren of D " shall die in my lifetime leaving any child or children who shall be living at my decease and who shall live to attain the age of twenty-one years then and in such case it is my will that the child or children of each of such child or grandchild so dying in my lifetime shall represent and stand in the place of his, her or their deceased parent or respective parents and shall be entitled to the same share or shares . . . which his, her or their deceased parent or parents would have been entitled to if living at the time of my decease."

It was held that the language of the proviso was wide enough to show an intention that a child of a child who was dead at the date of the will should represent such deceased child and that the words " shall die " did not import future dying but were equivalent to " shall have died " or " shall be dead."

The latest case to which I must refer is *Re Walker* [1930] 1 Ch. 469.

A testator by his will gave all his residuary personal estate to his trustees upon trust for conversion and payment of his debts and to invest and pay the income to his wife during her life and after her death for his children in equal shares, " provided nevertheless that in case any child of mine shall die in my lifetime leaving issue living at my death such issue shall stand in the place of such deceased child and shall take equally between them if more than one the share of my residuary estate which such deceased child of mine would have taken if he or she had survived me."

One of the testator's sons died three weeks before the date of the will, leaving one child, a daughter, surviving him.

The issue was whether the daughter of the deceased son of the testator was entitled to share in the residuary estate, and it was held by Eve, J., and the Court of Appeal that the words " shall die " must be strictly construed as referring to the future, and consequently that the daughter of the deceased son did not take any share in the residuary estate of the testator.

Applying the rule as laid down in *Loring* v. *Thomas*, it would seem that if the gift in *Re Walker* had been expressed to be to such issue of the deceased son as should attain twenty-one the result would have been different, because the expression " shall attain twenty-one " means " shall attain or shall have attained twenty-one," and therefore " shall die " used in juxtaposition with that expression is to be read as meaning " shall die or shall have died."

That appears to me to be rather strange !

Mr. Frederick Wood, solicitor, of Wrington, and Blagdon, Somerset, left £24,492, with net personalty £16,087.

Landlord and Tenant Notebook.

Effect of Refusal of Consent to Assignment.

THE recent case of *Pincott* v. *Moorstons Ltd.* (1937), 1 A.E.R. 513, C.A., raised an interesting question in connection with the refusal of a licence to assign. The propriety of the refusal was not challenged, either by reference to any express proviso as to respectable and responsible persons or by reference to L.T.A., 1927, s. 19 (1). But an issue arose between assignor and assignee whether the eventuality was covered by a somewhat novel provision in their contract.

The provision in question began with a statement: "The leasehold premises mentioned . . . are assignable only with the consent of the landlords . . ." and went on "the vendors shall use their best endeavours to obtain the requisite consent for the assignment . . . and if such consent cannot conveniently be obtained the vendors shall, at the option of the purchaser, procure a declaration of trust of the premises in favour of the purchaser, or otherwise deal with the same as she shall direct."

On the refusal of the landlords' consent, the purchaser gave the defendants an ultimatum, on the expiration of which she demanded the return of a deposit she had paid, and for which she sued in the action. The Court of Appeal upheld Branson, J., in rejecting her claim. The view taken by the courts was, briefly, as follows: special provision had been made for the event which had happened. The use of the expressions "best endeavours" and "conveniently be obtained" showed that the parties had considered the possibility of the refusal, and considered what they should do then. The clause entitled the vendor to perform the contract by declaration of trust or dealing with the property as directed.

In the course of the defendants' argument much stress was laid on, and in the course of the judgments reference was made to, a group of four decisions. These decisions, *Peebles* v. *Crossthwaite* (1897), 13 T.L.R. 198, C.A.; *Rainham Chemical Works Ltd.* v. *Belvedere Fish Guano Co.* [1921] 2 A.C. 465; *Jackson* v. *Simons* [1923] 1 Ch. 373; and *Chaplin* v. *Smith* [1926] 1 K.B. 198, were cited to show that a tenant bound by a covenant against alienation may do a good deal in the way of letting other people use and occupy the demised premises without infringing his covenant. In *Peebles* v. *Crossthwaite*, executors of a lessee, who had agreed to sell his business to a limited company, were held not to have parted with possession of the premises though the company was already trading there. *Rainham Chemical Works Co. Ltd.* v. *Belvedere Fish Guano Co.* decided that joint tenants who had formed a private company which had carried on its operations on the demised premises had not ceased to occupy them, and were liable, as occupiers, for nuisance. The plaintiff in *Jackson* v. *Simons* failed to satisfy the court that his tenant, by permitting a neighbour to use the front of the demised shop every night for the purpose of selling tickets of admittance to a night-club run by the neighbour in question, had sub-let any part of the premises, for no estate or interest had been granted. While in *Chaplin* v. *Smith* a similar action failed against a tenant who, like the joint tenants mentioned in the second case of the group, had converted his business into a limited company, but who was shown to retain the power to exercise real and effective possession.

Now the premises which were the subject-matter of the lease in *Pincott* v. *Moorstons Ltd.* were used for the purposes of a club, and it was the intention of the purchaser of the term to use them for those purposes. It is, therefore, reasonable to say that, provided that the covenant against alienation did not extend to parting with possession and to sharing possession and occupancy, which I assume it did not (the covenant is not set out in the report), the true object of the contract might well have been attained in spite of the refusal of consent. And if it be suggested that a court of law which adopts this attitude is conniving at the evasion of contractual obligations, the answer must be that courts have consistently, throughout the ages, discouraged the imposition of restrictions on freedom of alienation and encouraged tenants to find means of escape therefrom. In *Church* v. *Brown* (1808), 15 Ves. 258, the position was reviewed by Lord Eldon, who observed: "these covenants having been always construed by courts of law with the utmost jealousy to prevent the restraint from going beyond the express stipulation," and when the Conveyancing Act, 1881, excluded from the provision demanding forfeiture notices cases in which a breach of covenant against assignment and sub-letting was the cause of forfeiture, the courts continued to mark their disapproval in such decisions as *Chaplin* v. *Smith*, *supra*. That was the last decision before the coming into force of L.P.A., 1925, s. 146 (1) and (8), which has altered the position.

But two things are rather puzzling about this recent case. One is, why the vendors engaged to "procure" a declaration of trust. From whom were they to procure it—from the landlords, from whom they would have failed to procure consent to the assignment of the term to the now proposed *cestui que trust*? Can it be that what was meant was "execute" a declaration of trust?

The other puzzling feature is this: It is true that the ultimate object contemplated might have been achieved without any assignment. The plaintiff might have been put in a position to carry on a club on the premises for the rest of the defendants' term. Possibly a reasonable woman would have had recourse to the machinery provided by the clause (though I may say that the refusal of the consent was not her only grievance; she also complained of delay, but it was held that time was not of the essence and the delay not undue delay). But was there any obligation on her to act reasonably or lose her deposit in default? The clause reads as if it gave her, and not the defendants, an option; an unqualified option, which she could use or not use at her caprice.

The explanation may perhaps be concerned with the circumstances of the payment of the deposit sued for. The vendors' obligation to assign was undoubtedly qualified; it was limited to using their best endeavours to obtain the consent without which there could be no assignment. There was no allegation that they had failed to discharge this obligation, and if the deposit was paid merely to show that the plaintiff meant business, the defendants could retain it provided they carried out what they undertook to carry out. The judgments, however, pronounce that the plaintiff broke her contract, and this decision seems rather puzzling.

Our County Court Letter.

FRIED FISH AND FOOD POISONING.

IN a recent case at Bournemouth County Court (*Bayliss* v. *Brook*) the claim was for £30 as damages for negligence. The plaintiff's case was that his daughter had bought some fish and chips, at the defendant's shop, and one piece of fish was eaten by the plaintiff. It tasted a bit high and strong, but, thinking that this was due to the fat from the cooking pan, the plaintiff ate some brown bread and butter at the same time. His wife gave her piece to the cat, which refused to eat it. Half an hour later, the plaintiff's lips swelled, his jaw became fixed, and blisters appeared on his face. He was taken to hospital, where he remained two or three days. The plaintiff's medical evidence was that, although a regular fish eater, he was not susceptible to *urticaria*, but had contracted it on this occasion through eating fish. The defence was a denial of negligence, as the fish came from Grimsby the

same day, and this was the first complaint in twenty years. Medical evidence was given that the plaintiff was susceptible to *urticaria*, which was commonly due to eating eggs. It was not a case of food poisoning, as there were no gastric or intestinal symptoms of acute irritant poison. In case of decomposition of fish there might not be gastric symptoms, but instead there would be a high temperature and dirty tongue. His Honour Judge Hyslop Maxwell remarked that only one of several symptoms of food poisoning was present, and there was no sickness or abdominal pains. Moreover, the symptoms appeared only half an hour after the fish was eaten, and the *urticaria* was not due to poisoned fish. Judgment was given for the defendant, with costs. Compare "Meat Pies and Food Poisoning" in the "County Court Letter" in our issue of the 5th December, 1936 (80 SOL. J. 969).

THE TITLE TO THEATRICAL MANUSCRIPTS.

IN *Cooper* v. *Salberg*, recently heard at Birmingham County Court, the claim was for the return of certain books, and for damages for their detention. The plaintiff's case was that she was the administratrix of her late husband, who had been a scenic artist at the defendant's theatre since 1913. From 1921, however, the deceased had written plays and pantomimes in his spare time at home, in exercise books, and the latter were claimed by the plaintiff as part of the estate of the deceased. The defendant's case was that he had originally engaged the deceased at £4 a week as a scenic artist, but, having submitted certain writings, the deceased was subsequently employed also as a writer of pantomime scripts, at an increased salary, viz., £6 a week. This work was done at the theatre, but the scripts merely formed the groundwork, and were altered by the defendant and his musical director. Any work done at the home of the deceased was at the defendant's suggestion, to enable the deceased to work in quieter surroundings, in view of his failing health. The copyrights all remained vested in the defendant, however, and he was entitled to all copies of the manuscripts. His Honour Judge Ruegg, K.C., held that, in the absence of a written contract, which would have been necessary to establish the defendant's title, the plaintiff was entitled to the scripts, as part of the estate of the deceased. Judgment was given for their specific return, with costs.

THE DEFINITION OF A PARTNER.

IN the recent case of *In re Bullock: Hancox* v. *The Trustee*, at Stafford County Court, an appeal was heard against the trustee's rejection of a proof of debt in a bankruptcy, on the ground that the appellant was a partner and not a creditor. The appellant's case was that in April, 1932, he had lent £450, at 6 per cent., to the bankrupt to buy a drapery business, and had also guaranteed his bank account to the extent of £750. The appellant and the bankrupt were relatives by marriage, and the agreement was made with a view (1) to assisting a relative, and (2) to acquiring an option of becoming a partner, or introducing a son or daughter, if the business prospered. The option was never exercised, as in 1936 the business had assets of £3,000 and liabilities of £9,000, so that bankruptcy ensued. The respondent contended that the appellant became a partner, on signing the agreement. Alternatively, he was postponed under the Partnership Act, 1890, s. 3, and the proof was rightly rejected. His Honour Judge Ruegg, K.C., held that the parties never intended a present partnership, but only a future partnership between the borrower and the lender, or some member of his family, in one or more events which had never happened. Restrictive clauses were imposed on the borrower, to ensure the success of the business, but the appellant was not constituted a partner, and his proof should not have been rejected. The appeal was allowed, with costs, and an order was made for the admission of the proof.

Reviews.

Mews' Digest of English Case Law, 1925 *to* 1935. Second Edition. 1936. By G. T. WHITFIELD-HAYES, of the Middle Temple, Barrister-at-Law. In Two Volumes. Royal 8vo. London: Sweet & Maxwell, Ltd.; Stevens and Sons, Ltd. £6 6s. net.

Every lawyer knows "Mews,'" and those who use it will welcome the publication of this consolidated supplement superseding the 1925-1930 and subsequent annual supplements. Of especial value is the collection in one place of the Tables of Cases and Statutes judicially considered; their careful study will greatly assist in the never easy task of ascertaining the exact effect of judicial considerations of the law.

Pitman's Commercial Law. By J. A. SLATER, B.A., LL.B. Eleventh Edition, 1936. By R. H. CODE HOLLAND, B.A., of the Middle Temple, Barrister-at-Law. Crown 8vo. pp. xii and (with Index) 282. London: Sir Isaac Pitman & Sons, Ltd. 3s. 6d. net.

This excellent compendium of commercial law is addressed to students preparing for the examinations of the Royal Society of Arts, London Chamber of Commerce, Lancashire and Cheshire Union of Institutes, and similar bodies. They will find it of great assistance both as an introductory work and for purposes of revision. At the end of the book are set out questions on every chapter, and authoritative text books are recommended at the conclusion of each subject dealt with.

Students' Introduction to Conveyancing. By E. MILNER HOLLAND, of the Inner Temple, Barrister-at-Law. 1936. Demy 8vo. pp. xx and (with Index) 231. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

The learned author of this manual has made a clear distinction between the machinery of draftsmanship and the armoury of property rights. Accordingly, he has given us a lucid exposition of the elements of conveyancing procedure, eschewing the substantive law of landholding as far as it is consistent with clearness. A reference in future editions to disentailments and resettlements and the inclusion of a form of conveyance of a registered title would further perfect this book, which deserves the widest patronage.

Books Received.

The Public Health Act, 1936. By DAVID J. BEATTIE, LL.M. (Vict.), Solicitor of the Supreme Court. Foreword by Sir GWILYM GIBBON, C.B., C.B.E. 1937. Royal 8vo. pp. lxxiv and (with Index) 503. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 40s. net.

Higher Business Correspondence. By REGINALD SKELTON. 1937. Demy 8vo. pp. xi and (with Index) 237. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

For Lawyers and Others. By THEOBALD MATHEW. 1937. Demy 8vo. pp. 293. London, Edinburgh and Glasgow: William Hodge & Co., Ltd. 10s. 6d. net.

The Law Relating to Public Meetings and Processions. By ALBERT CREW, of Gray's Inn, and the Middle Temple, Barrister-at-Law, Recorder of Sandwich, and EVELYN MILES, B.A., B.Sc., of the University of London and Lincoln's Inn, Barrister-at-Law. 1937. Crown 8vo. pp. xix and (with Index) 96. London: Sir Isaac Pitman and Sons, Ltd. 5s. net.

Sutton and Shannon on Contracts. By RALPH SUTTON, M.A., One of His Majesty's Counsel, and N. P. SHANNON, of Gray's Inn, Barrister-at-Law. Second Edition. 1937. Demy 8vo. pp. lxx and 389 (Index, 24). London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

To-day and Yesterday.

LEGAL CALENDAR.

22 FEBRUARY.—On the 22nd February, 1875, John Huddleston became a Justice of the Common Pleas. In May he was transferred to the Exchequer.

23 FEBRUARY.—On the 23rd February, 1807, a terrible tragedy occurred at the Old Bailey when an unusually vast concourse assembled to witness a public execution. As the pressure grew a panic occurred. Some accounts said it began with the breaking of the axle-tree of a cart which was being used as a grandstand, others attributed it to the confusion arising from the upsetting of a pieman's basket. "It was shocking to behold a large body of the crowd as in one convulsive struggle for life fight with the most savage fury with each other." When the streets were cleared, it was found that twenty-eight people were dead.

24 FEBRUARY.—In his generation Charles Cole was regarded as "an eminent surveyor and builder," and everyone approved when he pulled down the venerable Ely House in Holborn, replacing it by "a uniform and handsome street." (St. Etheldreda's only escaped because the walls were too thick for the eminent housebreaker.) On the 24th February, 1781, he was a successful plaintiff in an action before Lord Mansfield against the Parish of St. Andrew's, Holborn. He succeeded in establishing that the site of the old episcopal palace on which he had built and which, since 1290, had been regarded as extra-parochial and free from parish assessments still enjoyed the privilege.

25 FEBRUARY.—On the 25th February, 1862, at the Carlisle Assizes, three blacksmiths were tried for murder. They had been salmon poaching at night in the River Eden when they had been surprised by a party of men employed to watch the fishery by the Earl of Carlisle. In the ensuing scuffle one of the keepers was drowned. The evidence proved insufficient to convict the three poachers of murder, but they were found guilty of manslaughter and sentenced to ten years' penal servitude.

26 FEBRUARY.—On the 26th February, 1831, Thomas Clarke, a boy of nineteen, was tried at the Durham Assizes for the murder of Mary Anne Westropp, a girl who was a servant in the same house as himself. One evening when his master and mistress were away he alarmed the neighbourhood saying that six men had broken into the house, robbed it and killed the girl whose body was found with a wound on the forehead. Over £20 was missing. Although he said that the robbers had attacked him, the prisoner bore no marks of violence. He was convicted and hanged.

27 FEBRUARY.—An over-zealous solicitor found himself defendant in an action for false imprisonment heard in the Common Pleas on the 27th February, 1830. A somewhat Dickensian scene centring round one of his clients who was thought to be out of his mind had occurred in his Chancery Lane office. The client had come to make some arrangement as to his affairs. With him were his son and a keeper, but the solicitor insisted on seeing him alone. The son then caught his father round the waist declaring that he would never be separated from him. The solicitor, having tried to push him gently from the room, called a constable and had him taken to the Hatton Garden Police Office. For this the son was now awarded £50 damages.

28 FEBRUARY.—On the 28th February, 1858, Manueli Zelphanta and Henagadei Italius, "two swarthy and sinister-looking Greek sailors," were tried for murder at the Swansea Assizes. They belonged to the "Penelope" brig and their victim was the ship's cook. They had beaten him insensible, stabbed him, robbed him and thrown his body in the canal. A jury of Englishmen found them guilty and they were executed in front of Swansea Gaol.

THE WEEK'S PERSONALITY.

When Huddleston was raised to the Bench, the qualities which had made him the most persuasive of advocates remained with him. It is on record how "he would leave his seat, and, approaching the jury box, point out most affably, perhaps some difficulties in a plan or a document; he would flatter, coax and wheedle them; he became in fact a thirteenth juryman; and it was almost impossible to get a verdict when his views were the other way." Tactfully he would bring round the most difficult juror. Thus, on one occasion, when one of them asked him to go against his conscience, "No," answered Huddleston, "I wish you to act in accordance with the evidence." Yet this easy familiarity in handling juries indicated no lack of punctiliousness in dealing with the Bar. He was zealous for the observance of forensic forms and customs, always insisting that due deference be paid to the judicial office and the occupant of the seat of justice. Love of display had guided him to the high places in society and marriage into a ducal house, and it gave him the keenest delight to preside over a *cause célèbre*, for he was completely at home on the Bench and was a match for any member of the Bar.

THE WIT OF AVORY, J.

In his recent speech at the banquet of the Jewellers' and Silversmiths' Association, the Lord Chief Justice said that the only joke he heard the late Mr. Justice Avory make in forty years was during a case in which it appeared that one of the parties, a retired stockbroker, had stocked a certain piece of land with cows, sheep and poultry. "Perhaps he would have been more fortunate," suggested Avory, "if he had stocked his land with bulls and bears." Yet, in his own acidulated style, the late judge had a ready and pointed wit, latent though it usually was. I like his words to a King's Counsel who tried to make a statement in a case in which he held only a watching brief. "I cannot hear you," said his lordship. "Counsel with watching briefs can only watch—and pray." Nor should a certain memorable occasion be forgotten on which a witness in a dispute over a motor car business said that he had sold five "lemons" for £250. In reply to the judge he explained that "lemon" was a trade term for second-hand cars of little value. "The answer," said Avory, J., "is a lemon."

PRAISE FOR THE WIG.

In the same speech by Lord Hewart, it was good to hear him talk so frankly in praise of the full-bottomed wig. It was Lord Chancellor Campbell who described it as "a grotesque ornament fit only for a West African chief," yet now the Lord Chief Justice has attributed to it a half share of the credit for the numerous and complicated virtues of the judicial bench, declaring that a judge "to satisfy in patience and in silence his conflicting cravings and obligations must have recourse to his full-bottomed wig." Thank Heaven, therefore, that this stimulating head-dress survived the gibes of Jefferson, who declared that it made "the English judges look like rats peeping through bunches of oakum," and of O'Connell, who mocked the judges with "twenty-nine pounds weight of an enormous powdered wig." There was much to be said for the horror of the traditionalist Park, J., at the sight of Lord Lyndhurst, who, as Chief Baron of the Exchequer, was one of the first judges to dispense with wig and three-cornered hat in ordinary wear. "Look at that fellow!" exclaimed Park. "Without a wig and such a hat! He don't deserve to be a judge!"

COUNTY COURT CALENDAR FOR MARCH, 1937.

Circuit 1—Northumberland, etc.
His Hon. Judge Thesiger
Alnwick,
Berwick-on-Tweed,
Blyth, 1
Consett, 19
Gateshead, 2
Hexham,
Jarrow,
Morpeth,
†*Newcastle-upon-Tyne, 3 (R.B.), 5 (J.S.), 8, 9, 11 (B.), 12 (A.), 24 (R.B.)
North Shields, 15, 16, 18 (B.)
South Shields, 10

Circuit 2—Durham, etc.
His Hon. Judge Richardson
Barnard Castle,
Bishop Auckland, 24
*Durham, 15, 16 (*R.B. every Tuesday*)
Guisborough,
†*Middlesbrough, 2, 17 (J.S.), 18
Seaham Harbour, 8
†*Stockton-on-Tees, 9 (B.), 23
Stokesley (*as business requires*)
†*Sunderland, 11 (B.), 12
†West Hartlepool, 5, 19

Circuit 3—Cumberland, etc.
His Hon. Judge Allsebrook
Alston,
Appleby, 13 (R.)
†*Barrow-in-Furness, 15, 16
Brampton,
*Carlisle, 19
Cockermouth, 18
Haltwhistle, 20
*Kendal, 24
Keswick,
Kirkby Lonsdale, 31
Millom,
Penrith, 25
Ulverston,
†*Whitehaven, 17
Wigton,
Windermere, 11 (R.)
*Workington,

Circuit 4—Lancashire.
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 18
*Blackburn, 1, 3 (B.B.), 8, 15 (J.S.)
†*Blackpool, 3, 4, 5 (R.B.), 10, 17 (J.S.)
*Chorley, 11
Clitheroe, 9
Darwen, 19 (R.)
Lancaster, 5
†*Preston, 2, 12 (R.B.), 16 (J.S.)

Circuit 5—Lancashire.
His Hon. Judge Crosthwaite
†*Bolton, 3, 10, 16 (J.S.)
Bury, 1, 8 (J.S.)
*Oldham, 4, 11, 18 (J.S.)
*Rochdale, 12, 19
*Salford, 2 (J.S.), 5, 9 (J.S.), 15, 17 (J.S.)

Circuit 6—Lancashire.
His Hon. Judge Dowdall, K.C.
His Hon. Judge Procter
†*Liverpool, 1, 2, 3, 4, 5 (B.), 8, 9, 10, 11, 12 (B.), 15, 17, 18, 19 (B.), 22, 23
St. Helens, 10
Southport, 9, 16
Widnes, 12
*Wigan, 11

Circuit 7—Cheshire, etc.
His Hon. Judge Richards
Altrincham, 10, 24
*Birkenhead, 3 (R.), 9, 11, 18 (R.), 23, 25
Chester, 2, 17
*Crewe, 12
Market Drayton, 12
*Nantwich, 1
Northwich, 18
Runcorn, 16
Sandbach, 5
*Warrington, 4, 18 (R.)

Circuit 8—Lancashire.
His Hon. Judge Leigh
Leigh, 5, 19
†*Manchester, 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 19 (B.), 22, 23, 24

Circuit 10—Lancashire, etc.
His Hon. Judge Burgis
*Ashton-under-Lyne, 5
*Burnley, 8 (R.B.), 11, 12
Colne, 10
Congleton, 19
Hyde, 17
*Macclesfield, 4, 9 (R.B.)
Nelson,
Rawtenstall, 3
Stalybridge, 18
*Stockport, 2, 16, 19 (R.B.), 22, 23
Todmorden, 9

Circuit 12—Yorkshire.
His Hon. Judge Frankland
*Bradford, 2, 3 (R.B.), 5, 9, 12, 17 (R.B.), 19 (J.S.), 23
*Halifax, 12 (R.B.), 18
*Huddersfield, 10 (R.B.), 16, 17
Keighley, 24
Skipton, 10

Circuit 13—Yorkshire, etc.
His Hon. Judge Essenhigh
*Barnsley, 17, 18, 19
Glossop, 24
Rotherham, 9, 10
*Sheffield, 3, 4, 5, 11, 12, 16 (J.S.), 23

Circuit 14—Yorkshire.
His Hon. Judge Stewart
Dewsbury, 4 (R.B.), 16
Leeds, 3 (R.), 4 (J.S.), 5, 9 (R.B.), 10, 11 (J.S.), 12, 17 (R.), 18 (J.S.), 19, 23 (R.B.), 24 (J.S.)
Otley, 17
Wakefield, 2, 11 (R.B.), 23 (R.)

Circuit 15—Yorkshire, etc.
His Hon. Judge Gamon
Darlington, 3
Easingwold,
*Harrogate, 5, 19
Helmsley, 11
Leyburn, 1
*Northallerton,
Pontefract, 9 (J.S.), 10, 22, 23 (J.S.), 24
Richmond, 12
Ripon,
Tadcaster, 18
Thirsk, 25
*York, 2, 16

Circuit 16—Yorkshire.
His Hon. Judge Sir Reginald Banks, K.C.
Beverley, 18 (R.), 19
Bridlington, 1
Goole, 16
Great Driffield,
†*Kingston-upon-Hull, 8, 9, 10, 11, 12 (J.S.)
New Malton,
Pocklington,
*Scarborough, 2, 3
Selby,
Thorne, 25
Whitby, 3 (R.), 4

Circuit 17—Lincolnshire.
His Hon. Judge Langman
Barton-on-Humber, 25 (R.)
†*Boston, 4 (R.), 11
Brigg, 1 (R.)
Caistor,
Gainsborough, 3 (R.), 10
Grantham, 19
†*Great Grimsby, 2, 3 (J.S.), 4, 17 (J.S.), 18 (*R. every Wednesday*)
Holbeach, 15
Horncastle, 24 (R.)
*Lincoln, 4 (R.), 8, 18 (R.B.)
*Louth, 16
Market Rasen, 5
Scunthorpe, 15 (R.), 22
Skegness, 12
Sleaford, 9
Spalding, 24
Spilsby, 5 (R.)

Circuit 18—Nottinghamshire, etc.
His Hon. Judge Hildyard, K.C.
Doncaster, 3, 4, 5, 22
East Retford, 9
Mansfield, 15, 16
Newark, 12 (R.)
*Nottingham, 4 (R.B.), 10, 11 (J.S.), 12, 17, 18, 19 (B.)
Worksop, [illegible] (R.), 23

Circuit 19—Derbyshire, etc.
His Hon. Judge Longson
Alfreton, 9
Ashbourne,
Bakewell, 2
Burton-upon-Trent, 10, 24 (R.B.)
Buxton, 8
*Chesterfield, 5, 12
*Derby, 3, 16 (R.B.), 17, 18 (J.S.)
Ilkeston, 16
Long Eaton, 11
Matlock,
New Mills,
Wirksworth, 4

Circuit 20—Leicestershire, etc.
His Hon. Judge Galbraith, K.C.
Ashby-de-la-Zouch, 11
*Bedford, 15, 17
Bourne, 17 (R.)
Hinckley, 8 (R.)
Kettering, 16
*Leicester, 1, 2, 3, 4 (B.), 5 (R.B.)
Loughborough, 9
Market Harborough, 10
Melton Mowbray, 19
Oakham, 12
Stamford, 8
Wellingborough, 18

Circuit 21—Warwickshire.
His Hon. Judge Dale
His Hon. Judge Ruegg, K.C. (Add.)
*Birmingham, 1, 2, 3, 4, 5, 8, 9 (B.), 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24

Circuit 22—Herefordshire, etc.
His Hon. Judge Roope Reeve, K.C.
Bromsgrove, 12
Bromyard,
Evesham, 17
Great Malvern, 1
Hay,
*Hereford, 9
*Kidderminster, 2
Kington, 10
Ledbury, 3
*Leominster, 8
*Stourbridge, 4, 5
Tenbury, 11
*Worcester, 16

Circuit 23—Northamptonshire.
His Hon. Judge Hurst
Atherston, 25
Bletchley, 22
*Coventry, 1, 2, 15, 17 (R.B.)
Daventry, 24
Leighton Buzzard,
*Northampton, 5 (R.B.), 8, 9, 16 (R.)
Nuneaton, 12
Rugby, 11, 25 (R.)
Watford, 3, 17

Circuit 24—Monmouthshire, etc.
His Hon. Judge Thomas
Abergavenny,
Abertillery, 9
Bargoed, 10
Barry, 4
Blaenavon, 23
†*Cardiff, 1, 2, 3, 5, 6
Chepstow,
Monmouth, 22
†*Newport, 16, 18
Pontypool, 17
*Tredegar, 11

Circuit 25—Staffordshire, etc.
His Hon. Judge Tebbs
*Dudley, 9, 16 (J.S.), 23
*Walsall, 4 (J.S.), 11, 18 (J.S.)
*West Bromwich, 3, 10 (J.S.), 17 (J.S.)
*Wolverhampton, 5 (J.S.), 12, 19 (J.S.)

Circuit 26—Staffordshire, etc.
His Hon. Judge Ruegg, K.C.
Burslem,
*Hanley, 4 (R.), 18, 19
Leek, 8
Lichfield, 10
Newcastle-under-Lyme, 9
*Stafford, 5
*Stoke-on-Trent, 3
Stone, 22
Tamworth, 11
Uttoxeter,

Circuit 28—Shropshire, etc.
His Hon. Judge Samuel, K.C.
Brecon, 19
Bridgnorth, 17
Builth Wells, 11
Craven Arms, 9
Knighton, 15
Llandrindod Wells, 12
Llanfyllin,
Llanidloes,
Ludlow, 10
Machynlleth,
Madeley, 18
*Newtown,
Oswestry, 23
Presteign,
*Shrewsbury, 22, 25
Wellington, 16
Welshpool,
Whitchurch, 24

Circuit 29—Carnarvonshire, etc.
His Hon. Judge Sir Artemus Jones, K.C.
Bala,
†*Bangor, 8
*Carnarvon, 10
Colwyn Bay, 11
Conway,
Corwen,
Denbigh,
Dolgelly,
*Festiniog, 3
Flint, 24 (R.)
Holyhead, 9
Holywell, 1
Llandudno,
Llangefni,
Llanrwst, 2
Menai Bridge,
Mold, 17
*Portmadoc, 4
Pwllheli, 5
Rhyl, 19
Ruthin, 12
*Wrexham, 15, 16

Circuit 30—Glamorganshire.
His Hon. Judge Williams, K.C.
*Aberdare, 2
Bridgend, 23, 24, 25
Caerphilly, 25 (R.)
*Merthyr Tydfil, 4, 5
*Mountain Ash, 3
Neath, 17, 18, 19
*Pontypridd, 10, 11, 12
Port Talbot, 16
*Porth, 8
*Ystradyfodwg, 9

Circuit 31—Carmarthenshire, etc.
His Hon. Judge Davies
Aberayron,
†*Aberystwyth, 4
Ammanford, 3, 17
Cardigan,
†*Carmarthen, 1
†*Haverfordwest, 15
Lampeter,
Llandilofawr,
Llandovery,
Llanelly, 5, 16
Narberth, 2
Newcastle-in-Emlyn,
Pembroke Dock,
*Swansea, 8, 9, 10, 11, 12, 13

Circuit 32—Norfolk, etc.
His Hon. Judge Rowlands
Beccles,
Bungay, 22
Diss, 23
Downham Market, 4
East Dereham,
Eye,
Fakenham,
†*Great Yarmouth, 18, 19
Harleston,
Holt,
†*King's Lynn, 11, 12
†Lowestoft, 5
North Walsham,
*Norwich, 16, 17
Swaffham, 24
Thetford, 9
Wymondham, 10

Circuit 33—Essex, etc.
His Hon. Judge Hildesley, K.C.
Braintree, 12
Brentwood, 9
*Bury St. Edmunds, 15
*Chelmsford, 8
Clacton, 16
Colchester, 10, 11
Felixstowe, 24
Halesworth, 23
Halstead,
Harwich,
†*Ipswich, 3, 4, 5
Maldon, 25
Saxmundham, 2
Stowmarket, 19
Sudbury, 17
Woodbridge,

Circuit 34—Middlesex.
His Hon. Judge Dumas
Uxbridge, 2, 9, 16

Circuit 35—Cambridgeshire, etc.
His Hon. Judge Farrant
Biggleswade, 16
Bishops Stortford,
*Cambridge, 17, 18
Ely, 9
Hitchin, 1
Huntingdon, 22
*Luton, 4
March,
Newmarket, 25
Oundle,
*Peterborough, 2, 3
Royston,
Saffron Walden, 15
Thrapston, 10
Wisbech, 23

Circuit 36—Berkshire, etc.
His Hon. Judge Cotes-Preedy, K.C.
*Aylesbury, 5, 19 (R.B.)
Banbury, 3 (R.B.), 17
Buckingham, 23
Chipping Norton, 24
Henley-on-Thames,
High Wycombe, 4
*Oxford, 1 (R.B.), 8
*Reading, 4 (R.B.), 11, 12
Shipston-on-Stour, 9 (R.)
Stratford-on-Avon, 18
Thame,
Wallingford, 15
Wantage, 9
Warwick, 19 (R.B.)
*Windsor, 10, 16
Witney,

Circuit 37—Middlesex, etc.
His Hon. Judge Hargreaves
Chesham, 2
*St. Albans, 16
West London, 1, 3, 4, 5, 8, 9, 10, 11, 12, 15, 17, 18, 19, 22, 23, 24, 25

Circuit 38—Middlesex, etc.
His Hon. Judge Beazley
*Edmonton, 4, 5 (R.), 12 (R.), 17 (R.B.), 18, 19, 23, 24 (R.)
Grays Thurrock, 9
*Hertford, 3
Ilford, 1 (R.), 2, 8 (R.), 15 (R.), 16, 22 (R.)
*Southend, 10, 11, 12

Circuit 39—Middlesex.
His Hon. Judge Lilley
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Shoreditch, 2, 4, 5, 9, 11, 12, 16, 18, 23
Whitechapel, 3, 5, 10, 12, 17, 19, 22

Circuit 40—Middlesex.
His Hon. Judge Thompson, K.C.
His Hon. Judge Higgins (Add.)
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Bow, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24

Circuit 41—Middlesex.
His Hon. Judge Earengey, K.C.
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Clerkenwell, 1, 2 (J.S.), 3, 4, 5, 8, 9 (J.S.), 10, 11, 12, 15, 16 (J.S.), 17, 18, 19, 22, 23 (J.S.), 24

Circuit 42—Middlesex.
His Hon. Judge Sir Hill Kelly
Bloomsbury, 1, 2, 3, 4, 5 (J.S.), 8, 9, 10, 11, 12, 15, 16, 17, 18, 19 (J.S.), 22, 23, 24

Circuit 43—Middlesex.
His Hon. Judge Drysdale Woodcock, K.C.
His Hon. Judge Higgins (Add.)
Marylebone, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25

Circuit 44—Middlesex.
His Hon. Judge Sir Mordaunt Snagge
His Hon. Judge Dumas (Add.)
Westminster, *Daily (except Saturdays) until 24th.*

Circuit 45—Surrey.
His Hon. Judge Haydon, K.C.
His Hon. Judge Drucquer (Add.)
*Croydon, 2, 3, 9, 10, 16, 18, 23
*Kingston, 5, 12, 19
*Wandsworth, 1, 4, 8, 10, 11, 15, 17, 18, 19, 22, 24

Circuit 46—Middlesex.
His Hon. Judge Drucquer
Barnet, 16, 23
*Brentford, 1, 4, 8, 11, 15, 18, 22
Willesden, 2, 3, 5, 9, 10, 12, 16, 17, 19, 23, 24

Circuit 47—Kent, etc.
His Hon. Judge Wells
*Greenwich, 3, 5, 12, 17, 19
Southwark, 1, 2, 4, 8, 9, 11, 15, 16, 18, 22, 23
Woolwich, 10, 24

Circuit 48—Surrey, etc.
His Hon. Judge Spencer Hogg
His Hon. Judge Higgins (Add.)
Dorking, 11
Epsom, 3, 17
*Guildford, 4, 18
Horsham, 9
Lambeth, 1, 2, 5, 8, 12, 15, 16, 19, 22, 23, 24
Redhill, 10

Circuit 49—Kent.
His Hon. Judge Clements
Ashford, 1
*Canterbury, 9
Cranbrook,
Deal,
*Dover, 10
Faversham, 8
Folkestone, 2
Hythe,
*Maidstone, 12
Margate, 11
†Ramsgate, 3
†*Rochester, 17, 18
Sheerness,
Sittingbourne, 16
Tenterden, 5

Circuit 50—Sussex.
His Hon. Judge Austin Jones
Arundel,
Brighton, 4, 5, 11, 12 (J.S.), 18, 19
†*Chichester, 17
*Eastbourne, 10, 24
*Hastings, 9, 23
Haywards Heath,
*Lewes, 1
Petworth,
Worthing, 2, 16

Circuit 51—Hampshire, etc.
His Hon. Judge Lailey, K.C.
Aldershot,
Basingstoke, 1
Bishops Waltham,
Farnham, 5, 6
*Newport,
Petersfield,
†*Portsmouth, 1 (B.), 4, 11, 18
Romsey,
Ryde, 3
†*Southampton, 2, 9, 16, 17 (B.), 23
*Winchester, 10

Circuit 52—Wiltshire, etc.
His Hon. Judge Jenkins, K.C.
*Bath, 4 (B.), 11 (B.)
Calne,
Chippenham, 9
Devizes, 8
*Frome, 2 (B.)
Hungerford, 15
Malmesbury, 18
Marlborough,
Melksham, 12
*Newbury, 10 (R.)
*Swindon, 3, 10 (B.)
Trowbridge, 5
Warminster,
Wincanton, 12 (R.)

Circuit 53—Gloucestershire, etc.
His Hon. Judge Kennedy, K.C.
Alcester,
*Cheltenham, 9, 10 (J.S.), 23
Cirencester, 11
Dursley, 24
†*Gloucester, 8, 25
Newent, 13
Newnham, 18
Northleach, 25
Redditch, 12
Ross, 19
Stow-on-the-Wold,
Stroud, 16
Tewkesbury, 15
Thornbury, 22
Winchcombe,

Circuit 54—Somersetshire, etc.
His Hon. Judge Parsons, K.C.
†*Bridgwater, 12
†*Bristol, 1, 2, 3, 4, 5 (B), 15, 16, 17, 18, 19 (B.), 22, 23
*Wells, 9
Weston-super-Mare, 10, 11

Circuit 55—Dorsetshire, etc.
His Hon. Judge Maxwell
Andover, 9 (R.)
Blandford, 18
*Bournemouth, 5 (R.), 12 (J.S.), 15, 16 (R.)
Bridport, 23 (R.)
Crewkerne, 9 (R.)
*Dorchester, 5
Lymington,
†Poole, 10
Ringwood, 22
*Salisbury, 4
Shaftesbury, 8
Swanage,
†Weymouth, 2
Wimborne, 25 (R.)
*Yeovil, 11

Circuit 56—Kent, etc.
His Hon. Judge Konstam, C.B.E., K.C.
Bromley, 2, 11, 16, 18, 23
Dartford, 9
East Grinstead,
Gravesend, 8
Sevenoaks, 15
Tonbridge,
Tunbridge Wells, 4
*Waltham Abbey, 19

Circuit 57—Devonshire, etc.
His Hon. Judge Wethered
Axminster, 15 (R.)
†*Barnstaple, 2
Bideford, 3
Chard, 16 (R.)
†*Exeter, 11, 12, 22
Honiton, 24
Langport, 5
Newton Abbot, 18
Okehampton, 19
South Molton,
Taunton, 8
Tiverton, 17
*Torquay, 9, 10, 23
Torrington, 4
Totnes,
Wellington, 17 (R.)
Williton, 16

Circuit 59—Cornwall, etc.
His Hon. Judge Lias
Bodmin, 19
Camelford, 18
Falmouth, 1 (R.)
Helston, 9
Holsworthy, 16
Kingsbridge,
Launceston, 17
Liskeard, 5
Newquay,
Penzance, 10
†*Plymouth, 2, 3, 4
Redruth, 11
St. Austell, 8
Tavistock, 15
†*Truro, 12

†The Mayor's and City of London Court.
His Hon. Judge Holman Gregory, K.C.
His Hon. Judge Whiteley, K.C.
His Hon. Judge Dodson
His Hon. Judge Thomas
Guildhall, *Daily (except Saturdays) until 24th.*

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar's Court only
(J.S.) = Judgment Summonses
(B.) = Bankruptcy only
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge.
(A.) = Admiralty

Obituary.

MR. A. B. BENCE-JONES.

Mr. Archibald Bence Bence-Jones, Barrister-at-Law, of King's Bench Walk, Temple, died on Wednesday, 24th February, at the age of eighty. Mr. Bence-Jones was called to the Bar by the Inner Temple in 1881, and went the North Eastern Circuit.

MR. W. W. BARKER.

Mr. Wilfrid Wildsmith Barker, solicitor, head of the firm of Messrs. Haigh, Barker & Scholes, of Dewsbury and Horbury, Yorks, died recently. Mr. Barker, who was admitted a solicitor in 1899, was for some years clerk to Horbury District Council.

MR. L. H. BELL.

Mr. Leonard Henry Bell, retired solicitor, of Rochester, died on Sunday, 21st February, after an accident through blindness, in his sixty-seventh year. Mr. Bell was admitted a solicitor in 1896.

MR. C. T. D. BURCHELL.

Mr. Charles Tufnell Dyne Burchell, solicitor, a partner in the firms of Messrs. Burchells and Messrs. Lyne & Holman, both of The Sanctuary, Westminster, died on Thursday, 18th February. Mr. Burchell was admitted a solicitor in 1882.

MR. G. S. CRAWSHAY.

Mr. Geoffrey Stratford Crawshay, solicitor, of Teddington, Middlesex, died on Monday, 22nd February, at the age of seventy-three. Mr. Crawshay was admitted a solicitor in 1888.

MR. J. S. DAVIES.

Mr. John Samuel Davies, solicitor, of Pontypridd, died at Whitechurch, Glam, on Wednesday, 17th February. Mr. Davies, who was admitted a solicitor in 1885, was clerk to the Magistrates at Pontypridd and Rhondda.

MR. J. W. HALL.

Mr. James William Hall, retired solicitor, of Sunderland, died on Thursday, 18th February, at the age of seventy-four. Mr. Hall was admitted a solicitor in 1892. He retired several years ago.

MR. A. T. HOLMES.

Mr. Arthur Thomas Holmes, retired solicitor, of Leeds, died at his home at Boston Spa, on Sunday, 14th February, at the age of seventy-nine. Mr. Holmes, who was admitted a solicitor in 1885, was a partner in the firm of Messrs. North and Sons, of Leeds. He retired in 1930.

MR. J. M. McMASTER.

Mr. John Maxwell McMaster, solicitor, of Liverpool, died in hospital at Garston on Thursday, the 18th February, in his eighty-second year. Mr. McMaster was admitted a solicitor in 1882. He was formerly Commanding Officer of the 5th Battalion King's Regiment (Liverpool).

MR. G. E. MAGER.

Mr. George Edmund Mager, M.C., solicitor, head of the firm of Messrs. Waller, Mager & Cobbett, of Adelphi, W.C., died at Richmond, Surrey, on Monday, 22nd February, at the age of sixty-three. Mr. Mager, who was admitted a solicitor in 1898, was formerly a Major in the 18th Brigade, R.F.A.

MR. R. W. MASON.

Mr. Richard William Mason, solicitor, a partner in the firm of Messrs. Hollest, Mason & Nash, of Farnham, died on Saturday, 20th February, in his seventy-ninth year. Mr. Mason, who was admitted a solicitor in 1881, was Registrar of Farnham County Court.

MR. W. H. TAYLER.

Mr. Walter Henry Tayler, solicitor, a partner in the firm of Messrs. Wansbroughs, Robinson, Tayler & Taylor, of Bristol, Devizes, Melksham and Weston-super-Mare, died in a nursing home at Bath on Sunday, 14th February, at the age of sixty-eight. Mr. Tayler, was admitted a solicitor in 1893. He was legal adviser to the Wiltshire County Police.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Wills of Residents Abroad.

Sir,—Our attention has recently been drawn to the difficulties which might arise as a result of a person resident abroad leaving a special will for proof in this country, usually, though not necessarily, relating either to property therein or for special purposes, i.e., exercising the power given under some trust. The matter is very much in point in the case of a tenant for life on whose death the settlement comes to an end and whose entire estate (if any), apart from the settled property, is outside the United Kingdom. In this case, it may well happen that the reversioners under the settlement would be entirely different from those who come into the free estate, and, of course, it might even be that there was little or no free estate, under which circumstances it can easily be seen that difficulties might arise as a result of the properties vesting in some persons abroad, who may or may not be willing to take out a grant in this country.

One way out is clearly to make a special will relating to the trust property and appointing the trustees of the settlement executors. This, however, suffers from the difficulty that it may, quite unintentionally, be revoked by the making of a subsequent will abroad containing the usual general revocation clause.

It occurs to us that the additional clause, set out below, to the English will might solve the difficulty, but the matter is not without doubt, and has not, as far as we can ascertain, been dealt with in any books or precedents. Of course, even this, we take it, would not override s. 18 of the Wills Act.

If you consider the matter of sufficient interest, we shall be glad to have the views of your correspondents.

"I declare that it is my express intention that this Will shall not be revoked by a general or other revocation clause in any other Will I may hereafter make or by implication arising therefrom or from any act of mine or by rule of law or any other implication but shall only be revocable by words expressly referring to this Will in particular terms."

BOULTON, SONS & SANDEMAN.

Northampton Square, E.C.
9th February.

"Land and Estate Topics."

Sir,—I was much interested in Mr. Moran's article "Land and Estate Topics" in your current issue, particularly with his reference to the Babylonian Code and Jerry Building. I do not know whether he was quoting the Laws of Hammurabi, for if so, I may add that if the house fell down and caused the death of the owner it was decreed that the builder should be put to death; but if it was the owner's son who was killed, then the son of the builder was put to death; a delightful instance of vicarious punishment.

Birmingham. L.A.S.
22nd February.

Notes of Cases.

House of Lords.

Robert Addie & Sons Collieries, Ltd *v.* **McAllister.**

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Alness and Lord Maugham.

8th, 10th December, 1936 and 8th February, 1937.

Workmen's Compensation—Termination of Compensation—Reference to Medical Referee of Question whether Workman has completely recovered from Injury by Accident — Whether that Reference includes the Question whether any Incapacity found to exist is due to the Accident—Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), ss. 12, 19.

Appeal from a decision of the first division of the Court of Session, by way of case stated under s. 49 of the Workmen's Compensation Act, 1925.

The workman, McAllister, was employed in the respondent company's colliery, and in October, 1932, sustained an injury to his back by an accident arising out of and in the course of his employment. He was paid compensation by agreement. In January, 1936, the employers submitted a minute of application for reference to a medical referee, alleging, *inter alia*, that the workman had fully recovered and was fit for his ordinary work, and that the workman denied that allegation. The matter having been referred to the referee, he was directed to certify as to the workman's condition and fitness for employment, stating whether he had wholly or partially recovered from the injury by accident, and specifying, if necessary, the kind of employment for which he was fit. The reference was made by the Sheriff Substitute in accordance with Form No. IV in the Appendix to the Act of Sederunt (S.R. & O. 1926, No. 398 (A)). The alternative request in the form, that the referee should certify " whether or to what extent the incapacity of the said claimant is due to the accident . . .," was deleted. In his certificate, the referee stated that the workman had wholly recovered from his injury by accident, but that he was quite unfit for his ordinary work. The Sheriff Substitute, in order to clear up any possible ambiguity, remitted the reference to the referee to state whether the unfitness was attributable to the accident. The referee then made a supplementary report, in which now, for the first time, the second alternative in Form IV was filled up, his finding being that the unfitness was not attributable to the accident. On that, the Sheriff Substitute terminated compensation. The Court of Session reversed that decision, and the workman appealed.

Lord Atkin said that the Court of Session had held that the omission to include, in the reference, the question raised by the second alternative, confined the referee's duties to considering the workman's condition and fitness for work, and excluded any report by the referee as to the causation of any incapacity which he might find to exist. They had arrived at that result by comparing s. 19 (2) and (3) with s. 19 (4) of the Act of 1925, and by applying *Archibald Russell Ltd.* v. *McNeilly* (1934), 27 B.W.C.C. 362, and the reasons for the decision given by Lord Macmillan. He (his lordship) thought that too narrow a construction had been put on the Act and that insufficient consideration had been given to the circumstance that *McNeilly's Case*, *supra*, was decided on facts very different from the present. *Primâ facie*, it was difficult to see why the result of an adequate report as to a workman's " condition " might not, in itself, be conclusive of his claim to receive further compensation. For instance, if the injury had ceased to cause any wage-earning incapacity or the possibility of its renewal, compensation must be ended. Could it make any difference that, at the time of the examination, there was incapacity due to some independent cause such as a domestic accident ? Section 19 (4) appeared to deal only with the case where incapacity plainly existed, the dispute being whether it was wholly or partly due to " the accident." In such a case the alternative reference was appropriate. In *McNeilly's Case*, *supra*, which was decided before the change in form of reference and certificate which was introduced as a result of *Penrikyber Navigation Colliery Co. Ltd.* v. *Edwards* [1933] A.C. 28, the reference arose on a dispute between employers and workman whether the workman was fit for light work as far as the accident was concerned. The Sheriff Clerk included in his reference also the alternative inquiry whether the incapacity was due to the accident. The referee certified that there was no incapacity due to the accident. That House had taken the view that that matter, never having been in dispute between the parties, should not have been referred. But the forms were now altered so as to conform with s. 12 of the Act of 1925 and introduce the question whether the workman had wholly or partially recovered from the accident. The employers had in this case averred and the workman denied complete recovery. The Lord President had held that such a reference excluded causation out of a loyal desire, his lordship thought, to follow *McNeilly's Case*, *supra*. If complete recovery were left to the referee, and he found it as a fact, he necessarily excluded injury by the accident as contributing to any other incapacity. So the parties, in raising the question of complete recovery, indicated a dispute which involved a decision whether, if there should be any incapacity, it was due to the accident. The reference here did not go beyond the dispute, and the certificate complied with the reference. On the certificate of complete recovery, which was now conclusive, the arbitrator could only decide to end the compensation. The appeal must be allowed.

The other noble Lords concurred.

Counsel : *King Murray*, K.C., and *J. R. Marshall*, for the appellants ; *R. Gibson*, K.C., and *E. J. Keith*, for the respondent.

Solicitors : *Beveridge & Co.*, agents for *W. J. Burness*, W.S., Edinburgh, and *J. A. McAra*, Glasgow ; *Caporn & Campbell*, agents for *D. D. McColm*, S.S.C., Edinburgh, and *Thos. Thomson*, Airdrie.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Kronstein *v.* **Korda.**

Greer, Slesser and Scott, L.JJ.
12th and 13th January, 1937.

Practice—Pleading—Extension of Time for Reply—Delay—Laches.

Appeal from King's Bench Division.

This action was brought on the 9th January, 1936. The plaintiff in his statement of claim relied on a written agreement made in 1923 between the defendant and one G, in whose place he claimed to stand by virtue of an assignment made in 1930. The agreement related to the production of certain films in Berlin, which, under it, the defendant was to produce and G was to finance, the defendant undertaking to indemnify him against loss. It was alleged in the statement of claim that in and before 1928 G had disbursed certain sums under the agreement, but that he had not received any sum by reason of the exploitation of the films produced. In this action the plaintiff claimed the sums so disbursed. On the 14th April, 1936, the defence was delivered. It did not admit the allegations in the statement of claim, and said that it disclosed no cause of action not barred by the Limitation Act, 1623. The plaintiff delivered no reply in due time. On the 28th April a summons for directions taken out by the plaintiff came on before a master, and at the defendant's request an order was made that the point of law touching

the Limitation Act should be set down for hearing and disposed of forthwith before the trial of the issues of fact. By consent it was also ordered that the point of law should be referred to the same master as a special referee under R.S.C., Ord. XXXVI, r. 50. The question of a reply was raised and the master suggested an adjournment for the purpose of putting one in, but the plaintiff did not avail himself of the suggestion. On the 21st May the point of law came before the master as special referee. He refused an application for an adjournment to allow the plaintiff to deliver a reply or to consider whether he should do so, and he refused leave to deliver a reply. Dealing with the case on the pleadings, he held that the action was barred, and that there should be judgment for the defendant. On the 11th June the plaintiff gave notice of appeal to the Divisional Court relying (*inter alia*) on the fact that he lived in Austria and that before the trial of the issue his legal advisers had not been able to get enough information for the delivery of a reply. On the 4th November the Divisional Court ordered that the master's order of the 28th April and the judgment directed by him on the 21st May should be set aside, and that the plaintiff should have liberty to apply for leave to deliver a reply and to amend the pleadings.

SLESSER, L.J., allowing the defendant's appeal, said that in so far as the Divisional Court had made an order allowing the case to proceed it was an interlocutory order, and leave to appeal from it was not required. As to the point under appeal, it was clear from the statement of claim that, in the absence of some answer, the Limitation Act barred the action. There arose the question whether on the 21st May the master was wrong in refusing an adjournment for the plaintiff to put in a reply to the plea of the Limitation Act. Under Ord. XXXVI, r. 50, the master, sitting as special referee, had the powers of a judge and *prima facie* the matter was in his discretion. His lordship referred to *Jones* v. *S.R. Anthracite Collieries Ltd.*, 90 L.J. K.B. 1315, and said that here nothing in the nature of surprise prevented the plaintiff from dealing with the matter, which had been brought to his notice by the defence on the 14th April. When the master on the 28th April had intimated that an adjournment might be considered, he had done nothing, and only in May, at the hearing of the preliminary point, had he asked for an adjournment which was refused. The master must be taken to have come to the conclusion that the conduct of the plaintiff and his advisers made an adjournment unreasonable. There was no principle beyond that indicated by Lord Sterndale, M.R., in *Jones* v. *S.R. Anthracite Collieries Ltd.*, *supra*, on which in such a case the court would interfere with the master's discretion. The plaintiff had been given every reasonable chance to put right any deficiency. If, through the laches of his advisers or his own incapacity, he had failed to put his case properly before the court, it would be a bad example to re-open the matter. There was a distinction between the case where justice required that a plaintiff should be allowed to put his case before the court and the case where his own conduct had excluded him from taking advantage of a principle which might otherwise prevail. Though the plaintiff was a foreigner, the defendant also had his rights. On a further point his lordship said that the Divisional Court had dealt both with the order for the preliminary trial in April and the refusal of the adjournment in May. As to the former, they had no jurisdiction, since, if there had been an appeal with regard to it, it would have been to a judge in chambers.

SCOTT, L.J., agreed.

GREER, L.J., in expressing concurrence, said he had grave doubts.

COUNSEL: *V. Holmes; Casswell* and *Beechman*.

SOLICITORS: *Allen & Overy; Douglas Grant & Dold*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Fryer *v.* Salford Corporation.

Slesser and Scott, L.JJ., and Farwell, J.
25th and 26th January, 1937.

NEGLIGENCE—CHILDREN'S COOKERY CLASS—GAS STOVES WITHOUT GUARDS—CHILD'S APRON CATCHING FIRE—WHETHER DANGER SHOULD REASONABLY HAVE BEEN FORESEEN.

Appeal from a decision of Swift, J.

In pursuance of their duty under s. 48 of the Education Act, 1918, the defendants provided a children's cookery class. About twenty children aged eleven and twelve attended. On this occasion each child prepared under instruction a pudding which was put in a steamer on a gas stove and when cooked returned to her to take home. There were two stoves, but neither had a guard round it. While the mistress was extracting the puddings, the children left their places and crowded round her to receive their puddings. The apron of the plaintiff who was one of them caught fire and she was injured. Swift, J., held that the defendants were negligent in not providing guards for the stoves and awarded damages. The allegation of negligence against the mistress failed.

SLESSER, L.J., dismissing the defendants' appeal, said that a distinction must be drawn between cases where the possibility of danger was reasonably apparent, in which case it was negligent not to take precautions, and cases where the possibility would not occur to a reasonable man when there was no negligence in not having taken precautions. His lordship referred to *Fardon* v. *Harcourt-Rivington*, 146 L.T. 391, at p. 392, *Hall* v. *Brooklands Auto-Racing Club* [1933] 1 K.B. 205, and *Readhead* v. *Midland Railway Co.*, L.R. 4, Q.B. 379. It could not be said that no reasonable person could have anticipated what happened here merely because it had never happened before. It was natural that the children should crowd round the stove to see the puddings. A guard could have been put round the stoves, at any rate when cooking operations did not make it necessary continually to get to the gas. If, upon consideration of the evidence, the learned judge had come to a contrary conclusion, this court might not have disturbed his finding, but he found that the danger should reasonably have been anticipated and could have been reasonably guarded against, and this appeal failed.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *Lynskey*, K.C., and *Denis Gerrard; Cave*, K.C., and *E. Rowson; J. C. Jolly*.

SOLICITORS: *William Charles Crocker*, agent for *Wood, Lord & Co.*, of Manchester; *Gibson & Weldon*, agents for *John Whittle, Robinson & Bailey*, of Manchester; *E. G. Floyd*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Blaustein *v.* Maltz, Mitchell & Co.

Slesser and Scott, L.JJ., and Farwell, J.
26th and 27th January, 1937.

SOLICITOR—RECOVERY OF MONEY FOR CLIENT—MONEY ENTERED AS RECEIVED ON HIS ACCOUNT—SUBSEQUENT CLAIM BY THIRD PARTY—DUTY TO ACCOUNT.

Appeal from a decision of MacKinnon, J.

In 1933, the plaintiff became engaged to be married to a lady whose father promised to supply him with a sum of money, part of which was to be used to buy a house. Accordingly, a house having been selected, he drew a cheque in favour of the plaintiff for £172 10s., being the amount of the deposit. The plaintiff paid it into his banking account and subsequently drew a cheque for the same amount in favour of the vendor's agent, and this was duly paid. The engagement was broken off, and the plaintiff in October, 1934, instructed the defendants, his solicitors, who had acted

for him in the matter of the purchase, to recover the deposit. In the result, the vendors paid to the solicitors the amount of the deposit for their principal, the plaintiff, and it was accounted for in their books as his property. The father of the lady, however, requested them to account to him for the money and not to the plaintiff. To this, the plaintiff objected. In March, 1935, the defendants transferred the money from the plaintiff's account to their own office account, relying on authority they had received from the lady's father to use it as their own. The plaintiff brought an action to recover the money, and MacKinnon, J., dismissed it.

SLESSER, L.J., allowing the plaintiff's appeal, said that the principle relied on in *Biddle* v. *Bond*, 6 B. & S. 225, and *Shelbury* v. *Scotsford*, Yelv. 23, could not be raised, because those cases dealt with the right to property and with bailment. That principle should not be extended to the claiming of a sum of money due on an account. In *Biddle* v. *Bond*, *supra*, the debt arose out of the wrongful dealing with goods. The whole principle was based upon bailment. But where an agent would otherwise be bound to account to his principal in respect of moneys received on his behalf, he could not resist the principal's claim by alleging some claim made by another person. His lordship referred to *Roberts* v. *Ogilby*, 9 Price 269, at p. 281, *Dixon* v. *Hamond*, 2 B. & Ald. 310, at p. 313, and *Thorne* v. *Tilbury*, 3 H. & N. 534, and said that the defendants had no title to the money.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *Wallington*, K.C., and *F. W. Wallace*; *Sharp*, K.C., and *T. L. Jones*.

SOLICITORS: *S. Rutter & Co.*; *Maltz, Mitchell & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Warmingtons *v.* McMurray.

Slesser and Scott, L.JJ., and Farwell, J. 3rd February, 1937.

SOLICITOR—RETAINER FOR ARBITRATION—ENTIRE CONTRACT—RETAINER FOR GENERAL PURPOSE OF CLEARING UP CLIENT'S AFFAIRS—CLIENT'S FAILURE TO PAY CHARGES—SOLICITOR'S RIGHT TO REFUSE TO ACT FURTHER.

Appeal from a decision of Goddard, J. (80 SOL. J. 446).

The affairs of the defendant, a widow, who had possessed considerable means, had become much involved, and one C. had induced her to enter transactions which had caused serious losses. In 1933 she consulted the plaintiffs, a firm of solicitors, who began to investigate her affairs. In a Chancery action judgment was obtained against C. on an interlocutory application for £1,500 with 7 per cent. interest, the rest of the action being left to proceed to trial. The plaintiffs then began bankruptcy proceedings against C., who, however, in 1934, persuaded the defendant to agree to put an end to the litigation and bankruptcy proceedings, and to refer certain matters to arbitration. The plaintiffs, however, proceeded to act in her best interests in connection with the arbitration. Having recovered the £1,500 and interest, and other substantial sums for her, and having worked for her for twenty months, they sent her a first bill of costs for £617. From time to time they pressed for payment, being met with promises and with pleas for delay. The plaintiffs finally refused to continue to act in the arbitration unless their first bill was paid. The defendant offered to pay for outstanding disbursements and counsel's fees still remaining to be paid, but intimated that she could not pay anything in respect of the plaintiffs' charges until she received certain funds that she was expecting from America. The plaintiffs then discharged themselves from their retainer and delivered a second bill for £814 of which £744 was on account of the arbitration proceedings. Goddard, J., gave judgment for them on both bills.

SLESSER, L.J., dismissing the defendant's appeal, said that if this was a general employment to do whatever was necessary to extricate the lady from her difficulties and not a contract to bring an action which might proceed at once or was to proceed with breaks, it was clear that the solicitors were entitled to discharge themselves on the ground that they had not been paid and did not wish to go on without being paid (*In re Hall & Barker*, 9 Ch. D 538, at p. 544). Here the employment was as general as it could be. It was not an agreement to act throughout the litigation.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *Hopper*; *White*, K.C., and *T. Turner*.

SOLICITORS: *Fosters*; *Warmingtons*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Bowen *v.* Commissioners of Inland Revenue.

Lord Wright, M.R., Romer and Greene, L.JJ.
3rd and 4th February, 1937.

REVENUE—INCOME TAX—SUR-TAX—WILL—ANNUITY TO TESTATOR'S WIDOW—DEFICIENCY IN ANNUITY—MADE UP BY BORROWING—RESIDUARY ESTATE AS SECURITY—WHETHER SUMS BORROWED ALLOWABLE AS DEDUCTIONS FROM INCOME OF RESIDUARY LEGATEE—FINANCE ACT, 1918 (8 & 9 Geo. 5, c. 15), s. 27.

Appeal from a decision of Lawrence, J. (80 SOL. J. 595).

By the will of B's father, an annuity free of tax was left to his mother. Settled legacies were left, *inter alia*, to B and his brother. There was a trust for sale, and the residue of the estate was first charged with the annuity to B's mother, and was then to be held for him and his brother equally. The executors of the will appropriated certain of the investments of the estate to an annuity fund for payment of the annuity, and other securities for the purpose of the residuary fund. In November, 1928, B and his brother requested the trustees of the will, who were prepared to divide the residuary fund between them, to retain the investments instead of dividing them. This transaction was held to be an assent by the executors that the residuary bequest should take effect. In 1931, the annuity fund was insufficient to pay the annuity, and tax on it. The trustees in the ensuing years, therefore, used also the income of the residuary fund to pay it. That being insufficient, the balance was found by borrowing from the bank on the security of the residuary fund, so as to avoid the sale of shares at an abnormally low price. Not until the overdraft at the bank had reached the amount of the residuary fund was it possible to encroach on the capital of the annuity fund. Lawrence, J., held that B was entitled under s. 27 (1) (*b*) of the Income Tax Act, 1918, to be allowed, as deductions from his income in his assessments to sur-tax, the amount of the sums so borrowed.

LORD WRIGHT, M.R., allowing the Crown's appeal, said that there was no evidence that B had paid these sums under any contract, or was under any personal liability to pay them. The securities were subject to the trusts of the will; their income was available to pay the widow's annuity, so far as might be required, and the *corpus* was liable to be dealt with to make up any deficiency. Even if the court had sanctioned the segregation of these particular funds and the transfer of them to the two sons individually, that would not have released that part of the estate from the trusts of the will in favour of the widow (*In re Evans & Bettell's Contract* [1910] 2 Ch. 438, at p. 442). It was inconsistent with principle to suggest that if the trustees picked out part of the estate and transferred it to the residuary beneficiaries, those beneficiaries became absolutely entitled and held free from the trusts of the will, though they remained under a personal liability to contribute as a personal debt whatever was necessary to make up the amount of the annuity.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *J. Stamp* and *R. Hills*; *J. M. Tucker*, K.C., and *C. King*.

SOLICITORS: *Solicitor of Inland Revenue*; *Bischoff, Coxe, Bischoff & Thompson*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Lewis *v.* Plunket.

Farwell, J. 15th January, 1937.

MORTGAGE—MORTGAGOR IN POSSESSION—INTEREST UNPAID—STATUTE OF LIMITATIONS—DETERMINATION OF MORTGAGEE'S INTEREST—CLAIM BY MORTGAGOR FOR RETURN OF TITLE DEEDS.

To secure a loan of £1,600, the plaintiff, in 1921, mortgaged certain freehold property belonging to her to the defendant, who acquired the fee simple and was given possession of the title deeds. There was a proviso for redemption, and the mortgagor covenanted to pay interest at 6 per cent., and it was further provided that all costs, charges and expenses properly incurred under the mortgage by the mortgagee or her assigns, and all moneys properly paid by her, should be charged on the property. The plaintiff remained in possession of the property, but, apart from one payment in 1921, paid no interest and (as was held in this action) made no acknowledgment of the mortgage or of the rights of the defendant, who took no steps to recover the interest or to foreclose. In 1936 the plaintiff, being minded to borrow money on the security of the property, requested the defendant to return to her the title deeds, and subsequently commenced an action claiming (*inter alia*) their delivery to her.

FARWELL, J., in giving judgment, said that under s. 34 of the Real Property Limitation Act, 1833, and s. 1 of the Real Property Limitation Act, 1874, the defendant had ceased to have any estate or interest in the land, and even if there had been an acknowledgment since the expiration of the period of twelve years, that would not have restored to her as mortgagee her estate under the mortgage. Now, a person in possession of property with a title both legal and equitable, good against all the world and indefeasible in law and equity, was, *primâ facie*, entitled to possession of the title deeds, His lordship referred to *Clayton* v. *Clayton* [1930] 2 Ch. 12, at p. 18, and *Crow* v. *Tyrrell*, 3 Madd. 179, at p. 181. The mortgagee no longer had any title to the property, and the person in whom the land was vested as being in possession had acquired a legal estate good against everybody. If it were necessary for the plaintiff to establish that she had the legal estate vested in her, that had been shown here. It had been argued that unless some reason were shown why the defendant should not retain the deeds, the court would not grant the relief sought, but she had ceased to have any interest in the property and the deeds could be of no possible use to her. This was a reason why she should not retain them, the plaintiff being sole owner of the property. The deeds must be delivered up.

COUNSEL: *Daynes*, K.C., and *Hewins*; *R. Horne*.

SOLICITORS: *Willes, Gladstone & Reid Sharman*; *Agar-Hutton, Butcher & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Lewis's Will Trusts; Phillips *v.* Bowkett.

Clauson, J. 21st January, 1937.

WILL—CONSTRUCTION—BEQUEST TO THE CHILDREN OF TWO NAMED PERSONS—WHETHER A CHILD OF ONE BY A PREVIOUS MARRIAGE INCLUDED.

The testator, who died in 1924, by his will conferred certain benefits on his mother, Margaret Jones, and her husband, Evan Jones, whom she had married subsequently to his birth. He also directed his trustees to divide a certain sum "in equal shares between the children of the said Evan Jones and Margaret Jones, on their respectively attaining the age of twenty-one years." Evan Jones having had a child by a previous marriage, the question arose whether she was entitled to a share along with the three children of the marriage of Evan Jones and Margaret Jones.

CLAUSON, J., in giving judgment, said that the words indicated such persons as could say that Evan Jones and Margaret Jones were their parents, and it would be an unnatural use of language to include a person who could only say that one of them was her parent. The money was divisible among the three children of the marriage.

COUNSEL: *Belsham*; *Harman*, K.C., and *Quass*; *Roxburgh*, K.C., and *R. W. Turnbull*.

SOLICITORS: *Stikeman & Co.*, agents for *Horatio Phillips & Co.*, of Ferndale, Glamorgan; *Wrentmore & Son*, agents for W. D. Thomas, of Porth.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Kelly *v* Wyld.

Luxmoore, J. 22nd January, 1937.

CIVIL SERVICE ASSOCIATION — FINANCIAL ORGANISATION COMMITTEE AND EXECUTIVE COMMITTEE—POWER TO DEAL WITH FUNDS—GRANT FOR RELIEF OF WAR DISTRESS IN SPAIN—WHETHER *Ultra Vires*.

The Civil Service Clerical Association was an unincorporated body with about 43,000 members. Its rules and constitution provided that its objects were in the first place to protect and promote the interests of its members. Other objects were the regulation of conditions of employment and the provision of death benefits. In pursuance of these objects the association was empowered to take any lawful action it might choose. In August, 1936, the financial organisation committee resolved to give £100 out of its funds to the National Council of Labour as a contribution to a fund organised by them for the relief of distress among women and children caused by the conflict in Spain. In September the executive committee, which under the rules could give rulings on any matters on which the rules were silent, endorsed the financial organisation committee's action. There was no previous instance of a donation from the funds for a foreign object. The plaintiff, a member of the association, contended that the grant was *ultra vires* and contrary to the association's rules and the Civil Service (Approved Associations) Regulations, 1927. He claimed a declaration that the defendants, the trustees, treasurer and general secretary respectively of the association were not entitled to pay the money out of the funds. The defendants contended that it was in the general interest of the members to make grants for charitable purposes out of the funds.

LUXMOORE, J., in giving judgment, said that the association's objects were of a wide and elastic character. The court could not give an exhaustive definition of the interests of the association. That was a matter for the members themselves. If they decided to adopt a certain course the court could not interfere. Nothing here made the payment of money for a charitable purpose, whether at home or abroad *ultra vires*. The committee had acted within the rules and policy of the association and were also within their powers in using the offices and staff to issue charitable appeals. The action failed.

COUNSEL: *Lawton*; *Morton*, K.C., and *R. M. Hughes*.

SOLICITORS: *Lewis & Co.*; *Cole & Matthews*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Hall's Settlement Trusts; Samuell *v.* Lamont.

Clauson, J. 28th January, 1937.

SETTLEMENT—PREVIOUS WILL—TRUST TO PAY LEGACIES MENTIONED THEREIN—WILL SUBSEQUENTLY REVOKED—SETTLOR PREDECEASED BY LEGATEES—WHETHER LEGACIES PAYABLE.

In September, 1904, the settlor made a will bequeathing (*inter alia*) legacies to one Lamont and one Lawrence. In November he made a settlement creating a trust fund which he settled on himself for life. After his death it was to be held in trust to pay debts and testamentary expenses "and the legacies bequeathed under the said will" of the testator,

in so far as the rest of his property at his death should be insufficient, and as to the residue after these payments " upon the trusts and subject to the powers and provisions " declared in " the said will." (In the settlement there was no recital with regard to the will.) In 1919 it was held by the court that the trusts of the settlement were absolute and irrevocable, whether or not the will was revoked. Lamont and Lawrence both died in 1933. The testator revoked the will in 1934. On his death, the question arose whether the personal representatives of the legatees were entitled to claim the amount of the legacies by virtue of the settlement.

CLAUSON, J., in giving judgment, said that, in view of the court's decision, the terms of the revoked will had to be read into the settlement. The question was: what were the trusts applicable to the fund in the events which had happened? The trust was to pay these gifts to Lamont and Lawrence as legacies, if the donees were living at the testator's death. Nothing in the terms of the settlement provided for any payment to their estates. Their personal representatives were not entitled to payment of these sums.

COUNSEL: *Beebee; L. W. Byrne; H. Salt.*

SOLICITORS: *Windybank, Samuell & Lawrence.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Beer *v.* R. M. Fairclough & Sons Ltd.

Lord Hewart, C.J., Swift and Goddard, JJ.
14th January, 1937.

ROAD TRAFFIC—LORRY DRIVER—EMPLOYERS REQUIRED TO ALLOW DRIVER TEN CONSECUTIVE HOURS FOR REST IN PERIOD OF TWENTY-FOUR HOURS—PART OF TIME SPENT BY DRIVER IN VOLUNTARILY RETURNING HOME BY TRAIN—WHETHER STATUTORY REQUIREMENT COMPLIED WITH BY EMPLOYERS—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), s. 19.

Appeal by case stated from a decision of a Metropolitan magistrate.

Informations were preferred by the appellant, Beer, a traffic examiner appointed under the Road and Rail Traffic Act, 1933, against the respondents for that, on four occasions, in twenty-four hour periods, they permitted one, Pick, employed by them, to drive motor vehicles, constructed to carry goods other than the effects of passengers, for such periods of time that he had not ten consecutive hours for rest in each twenty-four hour period, contrary to s. 19 (1) (iii) and (4) of the Road Traffic Act, 1930. At the hearing of the informations it was proved or admitted that the respondent company were the owners of 153 motor lorries, and had depots at London, Liverpool and Doncaster. Pick lived at Doncaster and was attached to the respondents' depot there. In two of the four twenty-four hour periods there was no consecutive period of ten hours during which Pick was not driving. In the other two periods, part of the ten consecutive hours not spent in driving, and entitled to be spent in resting, were spent by Pick in travelling by train back to Doncaster from the point to which, in the course of his duties, he had driven his lorry. Pick was not specifically ordered to return to Doncaster after he had finished driving the lorries, but did so voluntarily because he preferred to rest in his own home. The respondents paid Pick on each occasion an allowance of 5s. called " resting money," but did not pay his railway fare back to Doncaster unless he was specifically ordered by them to return by train. It was contended for the appellant that the time spent by Pick in travelling by train did not constitute hours of rest within the meaning of the Road Traffic Acts, and that the respondents acquiesced in Pick's using for travelling time which ought to have been used for rest, or encouraged him to do so. It was contended for the respondents that, if Pick chose to use for travelling home unnecessarily the time allotted to him by them for rest, they could not be held responsible, and that they did not acquiesce in his travelling, as they only knew after his return if he had done so. The magistrate being of opinion that no offence had been committed, since Pick had had ten consecutive hours for rest although he had not used them for that purpose, dismissed the informations.

LORD HEWART, C.J., said that the only question of law to which the magistrate had directed his attention was whether the respondents were guilty of an offence in that the time spent by Pick in travelling did not constitute rest within the meaning of the Road Traffic Acts. It was undoubtedly true that, as a mere matter of arithmetic, in the case of two of the informations there could not on any view have been found for Pick, within any of the periods of twenty-four hours, a consecutive period of ten hours for rest. But it was no such arithmetical computation that the magistrate had been asked to consider. He had only been asked to consider the question of law already referred to. The driver took the course of returning to Doncaster by train voluntarily. It might be that he would say that to him travelling in a railway train, as distinct from in a motor lorry, was resting. It was, however, plain that some error had arisen from a careless reading of s. 19 of the Act of 1930. What had to be done was to see to it that a person was not ordered to drive so that he had not at least ten consecutive hours for rest in any period of twenty-four hours—not " of " rest, but " for " rest. The statute did not seek to say that employers should see that the drivers rested, but that the drivers should have ten consecutive hours for rest. It was impossible to contend that, if a driver preferred to return to his own home in a period of at least ten hours available to him for rest, the employers were liable because the driver chose to spend half the time in travelling. It was unnecessary to decide the point, but it might be that, if the driver had been ordered by his employers to be at a particular place in order to resume his employment in such a time as not to allow ten consecutive hours apart from the period in which he was travelling under orders, other considerations would apply. The appeal must be dismissed.

SWIFT and GODDARD, JJ., agreed.

COUNSEL: *Valentine Holmes*, for the appellant; *R. T. Monier-Williams*, for the respondents.

SOLICITORS: *Treasury Solicitor; Clifford-Turner & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal

R *v.* Riordan.

Swift, Finlay and Goddard, JJ. 23rd February, 1937.

JUVENILE OFFENDER—CONVICTION OF LARCENY—COMMITTAL TO QUARTER SESSIONS FOR SENTENCE TO BORSTAL—PROCEEDINGS—DUTY OF QUARTER SESSIONS TO EXAMINE CIRCUMSTANCES OF CASE—CRIMINAL JUSTICE ADMINISTRATION ACT, 1914 (4 & 5 Geo. 5, c. 58), s. 10.

Appeal from a sentence of three years' detention in a Borstal Institution passed on the appellant at Maidstone Quarter Sessions on his committal there for sentence after being convicted of larceny at the Anerley Juvenile Court.

It was stated on behalf of the appellant that there had been material irregularities in the proceedings at quarter sessions: that there had been no inquiry by the court into the circumstances of the case: that the appellant had been given no opportunity of addressing the court: and that it was, apparently, not the practice to instruct counsel to prosecute in such cases at the particular quarter sessions.

SWIFT, J., delivering the judgment of the court, referred to s. 10 of the Criminal Justice Administration Act, 1914, and which deals with the committal of young persons to quarter sessions with a view to their sentence to detention in a Borstal Institution, and said that the whole foundation for the exercise of that jurisdiction was that the court which

passed sentence should enquire into the circumstances of the case. Similar legislation was to be found in s. 10 of the Vagrancy Act, 1824. That section had recently been considered by the court in *Rex* v. *Holding* (1934), 25 Cr. App. R. 28, at p. 30, where the Lord Chief Justice had laid stress on the duty of quarter sessions, firstly to enquire into the circumstances, and secondly to consider the appropriate sentence. The principle of that judgment applied equally to the present case. The court of quarter sessions was under a duty, before passing sentence, of making proper enquiries into all the circumstances of the case. They should have had before them not only the circumstances in which the appellant was convicted at petty sessions, but also such information as they thought right to demand with regard to his previous convictions, of which there were three. There had been no sort of examination into those matters. The whole case had been dealt with in a manner which was most unsatisfactory. For some reason or other counsel were not instructed on behalf of the police in such cases at the particular quarter sessions. The clerk of the court stated such matters as had to be stated, and then called a police officer to give evidence. He (his lordship) could imagine nothing which would make a person accused of crime feel more uncomfortable about the justice which was being administered to him than to see, without being able to hear, the clerk of the court obviously making some communication about him to the magistrates who were going to deal with him. Justice should not only be done, but should also be seen to be done, and he (his lordship) could imagine nothing more unfortunate than the manner in which it was dealt out to the present appellant. In the view of the court the sentence ought not to stand, and the order of the court would be that the sentence be quashed and the appellant discharged.

COUNSEL: *H. Elam*, for the appellant; *Maxwell Turner*, for the Crown.

SOLICITORS: *Registrar of the Court of Criminal Appeal; Solicitor for Metropolitan Police.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Parliamentary News.

Progress of Bills.

House of Lords.

Agricultural Wages (Regulation) (Scotland) Bill.
Read Second Time. [23rd February.
Banbury Waterworks Bill.
Read Second Time. [23rd February.
Beef and Veal Customs Duties Bill.
Royal Assent. [18th February.
Consolidated Fund (No. 1) Bill.
Royal Assent. [18th February.
East India Loans Bill.
Reported without Amendment. [25th February.
Firearms Bill.
Royal Assent. [18th February.
Greenock Burgh Extension, Etc., Provisional Order Confirmation Bill.
Read Third Time. [23rd February.
India and Burma (Existing Laws) Bill.
Royal Assent. [18th February.
Margate, Broadstairs and District Electricity Bill.
Reported with Amendments. [23rd February.
Ministry of Health Provisional Order (Bedford) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (Colwyn Bay) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (Ealing Extension) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (East Hertfordshire Joint Hospital District) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (Evesham and Pershore Joint Hospital District) Bill.
Read Second Time. [24th February.
Ministry of Health Provisional Order (Port of Manchester) Bill.
Read Second Time. [24th February.
Ministry of Health Provisional Order (Somerset and Wilts) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (Waltham Joint Hospital District) Bill.
Read First Time. [23rd February.
Ministry of Health Provisional Order (Wisbech Joint Isolation Hospital District) Bill.
Read First Time. [23rd February.
National Health Insurance Act Amendment Bill.
Read First Time. [23rd February.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [23rd February.
Public Works Loans Bill.
Royal Assent. [18th February.
Regency Bill.
Read Third Time. [23rd February.
Reserve Forces Bill.
Read Second Time. [23rd February.
Rickmansworth and Uxbridge Valley Water Bill.
Reported with Amendments. [23rd February.
Sheppey Water Bill.
Read Second Time. [24th February.
Trade Marks (Amendment) Bill.
Read Third Time. [18th February.
Unemployment Assistance (Temporary Provisions) (Amendment) Bill.
Royal Assent. [18th February.

House of Commons.

Deaf Children (School Attendance) Bill.
Reported without Amendment. [22nd February.
Defence Loans Bill.
Read First Time. [22nd February.
Local Government (Financial Provisions) Bill.
Read Second Time. [24th February.
Ministry of Health Provisional Order (Bedford) Bill.
Read Third Time. [19th February.
Ministry of Health Provisional Order (Colwyn Bay) Bill.
Read Third Time. [19th February.
Ministry of Health Provisional Order (Ealing Extension) Bill.
Read Third Time. [19th February.
Ministry of Health Provisional Order (East Hertfordshire Joint Hospital District) Bill.
Read Third Time. [19th February.
Ministry of Health Provisional Order (Somerset and Wilts) Bill.
Read Third Time. [22nd February.
Ministry of Health Provisional Order (South Nottinghamshire Joint Hospital District) Bill.
Read First Time. [22nd February.
Ministry of Health Provisional Order (Waltham Joint Hospital District) Bill.
Read Third Time. [19th February.
Ministry of Health Provisional Order (Wisbech Joint Isolation Hospital District) Bill.
Read Third Time. [22nd February.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [19th February.
Parliament Act (1911) Amendment Bill.
Second Reading negatived. [19th February.
West Ham Corporation Bill.
Read Second Time. [22nd February.

Questions to Ministers.

TITHE RENTCHARGE (REMISSION).

Sir R. GLYN asked the Minister of Agriculture whether he will cause inquiry to be made as to the progress of completing the necessary forms in connection with the application for remission of tithe payments where the existing figure exceeds one-third of Schedule B, due to the difficulty of obtaining the required documents and legal aid in filling in the forms; and whether, in special circumstances, the date for sending in these forms may be extended from the 1st March.

Mr. CHAMBERLAIN: I have been asked to reply. I do not consider that an inquiry as suggested by my hon. and gallant Friend is necessary. It may, however, be the case that an owner of land has been unable to lodge an application in the

prescribed form before 1st March, 1937. If, in such a case, he has before that date notified the Inspector of Taxes of his intention to make a formal application for a certificate of annual value, I understand that that notification will be accepted as complying with the statutory requirements provided that an application in the prescribed form is made at an early date thereafter. [24th February.

Societies.

The Birmingham Law Society.

The annual general meeting of the Birmingham Law Society was held at the Law Library, Birmingham, on Wednesday, 24th February, when the 118th annual report of the proceedings of the Society was presented. The report, which dealt with the year ended 31st December, 1936, may be summarised as follows:—

The membership of the Society shows an increase of six as compared with last year, the number on the register on 31st December, 1936, being 458. This is the highest total on record and the highest for any provincial law society.

The following members died during the year: Sir Francis Pepper and Messrs. W. Attwood (of Cradley Heath), H. H. Brown (of Lichfield), T. H. Cleaver, R. Marshall (of Dudley), J. J. Pritchard, H. J. Slater and T. W. Walthall.

Alderman S. J. Grey continued to serve as Lord Mayor of the City of Birmingham until November, 1936, when Alderman Harold Roberts, a member of the Society, was elected by the City Council as Lord Mayor for the year 1936–7. The Committee presented to the Lord Mayor an address of congratulation, which had been suitably illuminated and bound. Mr. J. H. Neild Collis has been appointed Registrar of the County Courts for Wolverhampton and Dudley. Mr. R. A. Pinsent has continued to represent the Society on the Council of The Law Society as an extraordinary member, to which office he was re-elected in September for a further period of three years.

The income and expenditure account shows a debit balance of £73 2s. 11d.

Throughout the year the ground floor and basement of the library premises were vacant. Two shop fronts have been put in, and since the end of the financial year the larger part of the ground floor and basement has been let.

Owing to technical breakdowns and the heavy cost of oil, the oil-burning apparatus has been replaced with an automatic coal stoker at a total cost of £198 9s. It appears that the new apparatus is working satisfactorily and an appreciable saving is anticipated.

The Committee gratefully accepted the kind offer of a member of the Society, and he has handed back to the Society his debenture for £25.

In June the Board of Inland Revenue offered to enter into an arrangement concerning the Society's income for income tax similar to the arrangements made with trade protection societies. The Society will benefit by the arrangement, and £39 7s. 6d. has been refunded by the Board in respect of the tax paid during the year.

Eleven thousand three hundred and ninety-seven books have been issued by the library during the year, a slight decrease on last year's figure.

Medals and Prizes.

The Society's Gold Medal has been awarded to Mr. H. H. Turner, articled to Mr. A. W. Dickson, of Birmingham, who was placed second in the First Class Honours at the March Examination. Mr. Turner was also awarded the Daniel Reardon Prize, and the award of the Gold Medal carries with it the Horton Prize.

The Bronze Medal has been awarded to Mr. M. Pollecoff, articled to Mr. E. F. Freeland, of Birmingham, who gained Second Class Honours at the June Examination. The Committee have awarded Mr. Pollecoff a prize of books to the value of three guineas.

Mr. D. L. Mogford, articled to Mr. R. H. Mogford, of Birmingham, and Mr. C. P. Robinson, articled to Mr. T. K. Evans, of Smethwick, took Third Class Honours and the Committee have awarded to each of them a prize of books to the value of two guineas.

Solicitors' Clerks' Pension Fund.

The Solicitors' Clerks' Pension Fund was inaugurated in 1930, and copies of the memorandum were then circulated to all solicitors.

The scheme has not yet received the support it deserves, and the Committee hope that members will not only inform their clerks of its existence, but encourage and assist them to join it. The Birmingham representative is Mr. W. Froggatt, c/o Messrs. Pinsent & Co.

Poor Persons in the County Court.

The General Committee suggested that some facilities should exist in the county court to assist poor people, but their suggestion was not approved by the Associated Provincial Law Societies.

Defaulting Solicitors.

The Committee have during the year given very careful thought to methods of dealing with defaulting solicitors. Many proposals were considered, but were found unsuitable. The Law Society were asked whether the powers of investigation given to them by the Solicitors Rules could be delegated to a local society; the reply was that the powers could not be so delegated. Considerable correspondence took place with The Law Society, which it is hoped will result in prompter action being taken by that body in the event of a complaint against a solicitor being made.

Ball.

The ball organised by the Society was held at the Grand Hotel, on Wednesday, 21st October. The guests included the President of The Law Society, Mr. H. A. Dowson and Mrs. Dowson. The function appears to have given general enjoyment, and the Committee are happy to report that as a result a cheque for £65 2s. 4d. has been forwarded to the Solicitors' Benevolent Association. The cost of entertaining the Society's guests was defrayed by the members of the Committee.

Solicitors' Practice Rules.

The Solicitors' Practice Rules were brought into force from the 1st October last. They are designed to prevent touting and undercutting, profit sharing with unqualified persons, and the abuse of so-called "legal aid societies."

As regards r. 2, the Committee have by resolution declared that there is no prevailing scale of charges in the Birmingham district. They have further resolved approving in principle the introduction of a minimum scale for conveyancing work, and are at present considering the scale and the methods of enforcing it.

The Committee feel, however, that the Society should consider and vote on such a scale in general meeting before its introduction.

Records.

The Committee would again call the attention of members to the advisability of old deeds and records being placed in the authorised repositories, where they will be cared for and made available for the historian.

The local repositories are Birmingham and District, the Reference Library, Birmingham; County of Warwick (excluding Birmingham and District), the Trustees, Shakespeare's Birthplace, Stratford-upon-Avon; County of Stafford, the William Salt Library, Stafford; County of Worcester, the Shire Hall, Worcester.

Poor Persons Procedure.

The committee nominated under the Poor Persons Rules, 1925, have continued to carry on their work during the year.

One meeting of the full committee was held during the year, and forty-one meetings of the rota members. The number of applications to the committee was 489, an increase of twenty-seven compared with last year; certificates were granted in 140 cases, as against 138 in 1935.

The average wage of the applicant would appear to be slightly higher, and many applicants when refused on the ground of means, do not appear greatly surprised at the decision.

The committee feels that most agency work, especially the service of papers, should be paid for out of the deposit.

In October the committee invited the Wolverhampton and Stafford Poor Persons Committees to discuss the boundaries of areas covered by each committee, and after a useful discussion, certain boundaries in the Cannock district were agreed upon.

The New Rules appear to be working satisfactorily.

The committee wish to thank both branches of the profession for their generous support during the year.

The Poor Man's Lawyers' Association, which is quite independent of the Poor Persons Committee, continues to give free legal advice as heretofore to persons too poor to pay for it. The committee and the Association work in concert, the Association transmitting suitable cases to the committee.

During the year several members have rendered valuable assistance in this work. It is understood that the need for further consultants is pressing and the Honorary Secretary of the Association, Mr. F. C. Minshull, the Council House, Birmingham, will be glad to hear from any further members or senior articled clerks willing to give their services. The

Society's representatives on the committee of the Association are Messrs. E. R. Bickley and Gardner Tyndall.

LEGAL EDUCATION.

The report of the Birmingham Board of Legal Studies for the year ended 31st July last shows that the total number of students is 124 (compared with 121 in the previous year), of whom fifty-three are reading for The Law Society's Examinations.

Dublin Law Students' Debating Society.

The inaugural meeting of the Society was held in King's Inns, on Friday, 12th February, with the President of the Society (Mr. Justice Fitzgibbon) in the chair. There was a large attendance of the business and professional life of the city, to whom the auditor delivered his inaugural address entitled: "Some Irish Social Problems." During the course of his address the auditor touched upon unemployment, housing and the low marriage rate, which provided a fruitful field for the speakers who followed. After the address was delivered, the motion: "That the auditor is deserving of the best thanks of the Society for his address," was proposed by Mr. McQuickin, S.C., and seconded by Mr. Kingsmill-Moore, S.C., in which they spoke to the auditor's paper. The second motion: "That the Law Students' Debating Society is deserving of the support of the Benchers, members and students of the Honourable Society of King's Inns," was proposed by Mr. McGilligan, Barrister-at-Law, T.D., and seconded by Mr. K. Haugh, Barrister-at-Law, they also speaking at some length to the paper. The President of the Society then presented medals to the successful competitors in both legal and general debate and addressed the house before bringing the meeting to a close.

General Council of the Bar.

The following officers have been appointed by the Council for the ensuing year: Chairman, Sir Herbert Cunliffe, K.C., Vice-Chairman, Mr. R. E. L. Vaughan Williams, K.C., Hon. Treasurer, Mr. A. T. Miller, K.C. The following have been appointed additional members of the Council under Regulation 4: Sir Lynden Macassey, K.B.E., K.C., Mr. R. E. L. Vaughan Williams, K.C., Mr. A. M. Dunne, K.C., Mr. R. F. Bayford, O.B.E., K.C., Mr. Trevor Watson, K.C., Mr. H. St. John Field, K.C.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 15th February, at 8 p.m. Mr. T. R. Owens proposed the motion: "That this House is in favour of co-educational schools." Mr. J. W. F. Bartholomew opposed. Miss Colwill and Messrs. G. H. Pritchard, Gibbons, Hill, Harris, Pratt, Too and Hall also spoke, and Mr. Owens replied. The motion was put to the House and lost by seven votes to six. Attendance sixteen.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 22nd February, at 8 p.m. Mr. G. C. Raffety proposed the motion: "That this House abhors the present practice of giving tips." Mr. R. J. Kent opposed. Mr. Ball, Miss Colwill, Messrs. S. A. Redfern, Hill, Lawton, Owens, McQuown and Vine-Hall also spoke, and Mr. Raffety replied. The motion was put to the House and carried by nine votes to six. Attendance sixteen.

United Law Clerks' Society.

The 105th Anniversary Festival of this Society will be held on Monday, the 15th March next, and the following letter has been circulated by The Right Honourable Lord Justice Greene, to a large number of members of the profession.

Royal Courts of Justice,
London, W.C.2.
4th February, 1937.

Dear Sir,

I have been invited to preside at the Annual Dinner of the United Law Clerks' Society which will take place at the Connaught Rooms on Monday, the 15th March. If you can support me on this occasion I shall be more than grateful. No one who has had the privilege of being present at the Society's Annual Dinner can have failed to be impressed by the spirit of friendship and co-operation among clerks in both branches of the Profession, which has built up and sustained this splendid Society from its institution in the year 1832. Its record of service as a friendly, a benevolent, and a health insurance Society, made possible by the loyal support of the law clerks and their friends and by the efficient management which it has always enjoyed, is one which should command the admiration of all who are engaged in the administration of the law. More than that, it deserves their enthusiastic support, and on this occasion I venture to hope that this support will be forthcoming in no less generous measure than in past years.

I hope that you will find it possible to be present. If you are unable to do so, perhaps you will send a donation to an admirable cause, remembering with gratitude the services which the law clerks perform, not only for all of us, but also for the law itself.

Yours sincerely,
WILFRED GREENE.

The Society's address is 2, Stone Buildings, Lincoln's Inn, London, W.C.2.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 16th February (Chairman, Mr. J. E. Terry), the subject for debate was "That the case of *Re a Debtor* (1937), 1 All E.R. 1, was wrongly decided." Mr. R. Landman opened in the affirmative. Mr. P. W. Iliff opened in the negative. Mr. R. Morgan seconded in the affirmative. Mr. L. A. Darke seconded in the negative. The following members also spoke: Messrs. C. A. G. Simkins, G. Roberts, H. F. MacMaster, L. E. Long, F. G. Timmins, G. Russo, Q. B. Hurst, K. Elphinstone and W. M. Pleadwell. The opener having replied, and the chairman having summed up, the motion was lost by eight votes. There were twenty-four members present.

Rules and Orders.

THE HOUSING ACT (OVERCROWDING AND MISCELLANEOUS FORMS) REGULATIONS, 1937, DATED JANUARY 29, 1937, MADE BY THE MINISTER OF HEALTH UNDER SECTION 176 (1) OF THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. C. 51). [S.R. & O., 1937, No. 80. Price 2d. net.]

THE HOUSING ACT (EXTINGUISHMENT OF PUBLIC RIGHT OF WAY) REGULATIONS, 1937, DATED JANUARY 29, 1937, MADE BY THE MINISTER OF HEALTH UNDER SECTION 176 (1) OF THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. C. 51). [S.R. & O., 1937, No. 79. Price 1d. net.]

THE HOUSING ACT (FORM OF ORDERS AND NOTICES) REGULATIONS, 1937, DATED JANUARY 25, 1937, MADE BY THE MINISTER OF HEALTH UNDER SECTION 176 (1) OF THE HOUSING ACT, 1936 (26 GEO. 5 & 1 EDW. 8. C. 51). [S.R. & O., 1937. No. 78. Price 1s. 5d. net.]

Legal Notes and News.

Honours and Appointments.

Sir MAURICE GWYER, K.C.B., K.C.S.I., Chief Justice of India, has been elected an Honorary Master of the Bench of the Inner Temple.

Mr. A. E. GILFILLAN, Deputy Town Clerk of Middlesbrough, has been appointed Town Clerk of Barnsley. Mr. Gilfillan was admitted a solicitor in 1927.

Mr. GEORGE ERNEST DALDY has been appointed Town Clerk of Aldeburgh, in succession to the late Mr. Henry Clement Casley, who held that position for fifty-one years. Mr. Daldy has been acting as Deputy Town Clerk of the borough since 1930.

Mr. WILLIAM IRVING WATKINS, Deputy Town Clerk of Ilkeston, has been appointed Clerk and Solicitor to the Redditch Urban District Council. Mr. Watkins was admitted a solicitor in 1930.

Mr. CHARLES MARTIN SIDNEY WELLS, Assistant Solicitor to the Leicestershire County Council, has been appointed to a similar position with the Essex County Council. Mr. Wells was admitted a solicitor in 1932.

Mr. HENRY ARTHUR FOX, Assistant Solicitor, Todmorden, has been appointed Deputy Town Clerk of Heywood. Mr. Fox, who was admitted a solicitor in 1934, succeeds Mr. W. C. Anderson, LL.B. who has been appointed Assistant Solicitor in the Legal Department of the National Association of Local Government Officers.

Notes.

Colonel G. E. F. Copeman, who was Clerk of the Isle of Ely County Council for twenty-eight years and retired in 1935, has been returned unopposed as a member of the council.

The annual banquet of the City of London Solicitors' Company will be held at the Mansion House (by kind permission of the Lord Mayor) on Thursday, 4th March, at 7 for 7.30 p.m.

In view of the desirability of avoiding the publication of the names of prosecutors in blackmail cases the Home Office has issued a circular to clerks of courts of summary jurisdiction drawing attention to the possibility of leakage before magistrates have had an opportunity of considering such cases.

A meeting of the Solicitors' Managing Clerks' Association will be held on Friday, 5th March, in the Inner Temple Hall, by kind permission of the Benchers, when Mr. Gilbert Beyfus, K.C., will deliver a lecture on "Some Aspects of the Law as to Gaming." The chair will be taken at 7 o'clock precisely by The Right Hon. Lord Wright. Meeting ends at 8 p.m.

A sessional evening meeting of the members of the Auctioneers' and Estate Agents' Institute will be held at 29, Lincoln's Inn Fields, W.C.2, on Thursday, 4th March, at 7 p.m., when Mr. H. F. Finn-Kelcey (Member of Council and Chairman Livestock (Emergency) Committee) will deliver a paper entitled "Agistment Agreements *v.* Hire Purchase."

Major W. H. Bailey has completed twenty-five years' service in the office of Town Clerk of Taunton, and at a recent meeting of the Council the Mayor, Councillor F. C. Spear, congratulated him on his silver jubilee. Before going to Taunton in 1912, Major Bailey, who was admitted a solicitor in 1900, was at Derby, first as Assistant Solicitor and then as Deputy Town Clerk and Clerk of the Peace.

The Bishop of Winchester (Dr. Cyril Garbett) has appointed under official seal Mr. Edmund Bourgaize, Law Clerk, to be Greffier or Notary of the Ecclesiastical Court of Guernsey and its dependencies, vacant by the death of Mr. Cecil A. Carey, who had held the appointment for forty years. The Ecclesiastical Court is presided over by the Dean of Guernsey as Judge. It sits weekly. The Dean, as Commissary to the Bishop, has jurisdiction over all wills of personalty, grants marriage licences, institutes to benefices, and issues the mandate for inductions. As Dean in the Court he grants faculties, admits churchwardens, and has a general oversight of the Church in the islands of the Deanery.

Court Papers.

Supreme Court of Judicature.

Date.		Emergency Rota.	Appeal Court No. I.	Group I. Mr. Justice Eve. Witness Part I.	Mr. Justice Bennett. Witness Part II.
		Mr.	Mr.	Mr.	Mr.
Mar.	1	Blaker	Andrews	*Ritchie	*Blaker
,,	2	More	Jones	*Blaker	*More
,,	3	Hicks Beach	Ritchie	*More	*Hicks Beach
,,	4	Andrews	Blaker	Hicks Beach	*Andrews
,,	5	Jones	More	Andrews	*Jones
,,	6	Ritchie	Hicks Beach	Jones	Ritchie
		Group I. Mr. Justice Crossman. Non-Witness	Mr. Justice Clauson. Non-Witness	Group II. Mr. Justice Luxmoore. Witness Part II.	Mr. Justice Farwell. Witness Part I.
		Mr.	Mr.	Mr.	Mr.
Mar.	1	More	Jones	Andrews	*Hicks Beach
,,	2	Hicks Beach	Ritchie	Jones	*Andrews
,,	3	Andrews	Blaker	Ritchie	*Jones
,,	4	Jones	More	Blaker	*Ritchie
,,	5	Ritchie	Hicks Beach	More	*Blaker
,,	6	Blaker	Andrews	Hicks Beach	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 4th March, 1937.

	Div. Months.	Middle Price 24 Feb. 1937.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	108¼	3 13 11	3 8 5
Consols 2½%	JAJO	76	3 5 9	—
War Loan 3½% 1952 or after	JD	102	3 8 8	3 6 8
Funding 4% Loan 1960-90	MN	111	3 12 1	3 6 2
Funding 3% Loan 1959-69	AO	96½	3 2 2	3 3 6
Funding 2½% Loan 1956-61	AO	87½	2 17 2	3 5 2
Victory 4% Loan Av. life 23 years	MS	108¼xd	3 13 11	3 9 5
Conversion 5% Loan 1944-64	MN	114½	4 7 6	2 11 6
Conversion 4½% Loan 1940-44	JJ	106¾	4 4 3	3 0 6
Conversion 3½% Loan 1961 or after	AO	100¼xd	3 9 8	3 9 5
Conversion 3% Loan 1948-53	MS	99¾	3 0 2	3 0 5
Conversion 2½% Loan 1944-49	AO	96¼xd	2 11 10	2 17 0
Local Loans 3% Stock 1912 or after	JAJO	88½	3 7 10	—
Bank Stock	AO	342	3 10 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77½	3 11 0	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88½	3 7 10	—
India 4½% 1950-55	MN	110	4 1 10	3 10 5
India 3½% 1931 or after	JAJO	90	3 17 9	—
India 3% 1948 or after	JAJO	77	3 17 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	112	4 0 4	3 15 8
Sudan 4% 1974 Red. in part after 1950	MN	112	3 11 5	2 18 9
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 5 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 8 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90½	2 15 3	3 3 5
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 4
Australia (C'mm'nw'th) 3% 1955-58	AO	93	3 4 6	3 9 2
Canada 4% 1953-58	MS	107	3 14 9	3 9 0
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	97	3 1 10	3 8 8
Nigeria 4% 1963	AO	112	3 11 5	3 6 5
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	91½	3 5 7	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	104½	3 7 0	3 2 8
Leeds 3% 1927 or after	JJ	90	3 6 8	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	101	3 9 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	73½	3 8 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84½	3 11 0	—
Manchester 3% 1941 or after	FA	88	3 8 2	—
Metropolitan Consd. 2½% 1920-49	MJSD	96	2 12 1	2 17 6
Metropolitan Water Board 3% "A" 1963-2003	AO	85½	3 10 2	3 11 5
Do. do. 3% "B" 1934-2003	MS	87	3 9 0	3 10 1
Do. do. 3% "E" 1953-73	JJ	95	3 3 2	3 4 9
Middlesex County Council 4% 1952-72	MN	109	3 13 5	3 5 5
* Do. do. 4½% 1950-70	MN	110½	4 1 5	3 10 8
Nottingham 3% Irredeemable	MN	87½	3 8 7	—
Sheffield Corp. 3½% 1968	JJ	103½	3 7 8	3 6 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	103½	3 17 4	—
Gt. Western Rly. 4½% Debenture	JJ	114½	3 18 7	—
Gt. Western Rly. 5% Debenture	JJ	126½	3 19 1	—
Gt. Western Rly. 5% Rent Charge	FA	120½	4 3 0	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	119½xd	4 3 8	—
Gt. Western Rly. 5% Preference	MA	112½xd	4 8 11	—
Southern Rly. 4% Debenture	JJ	102½	3 18 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108	3 14 1	3 10 3
Southern Rly. 5% Guaranteed	MA	120xd	4 3 4	—
Southern Rly. 5% Preference	MA	109½xd	4 11 4	—

*Not available to Trustees over par.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock

Approxi-ate Yield with demption	
s.	d.
8	5
—	
6	8
6	2
3	6
5	2
9	5
11	6
0	6
9	5
0	5
17	0
—	
—	
—	
—	
10	5
—	
—	
15	8
18	9
5	8
8	0
3	5
12	4
9	2
9	0
2	0
10	0
8	8
6	5
10	0
8	4
10	0
—	
1	2
2	8
—	
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—	
—	
—	
17	6
11	5
10	1
4	9
5	5
10	8
—	
6	4
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10	3
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